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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973

No. 73-1723

John L. Hill, Attorney General of Texas,
Appellant,

v.

Michael L. Stone, et al.,
Appellees

On appeal from the United States District Court for the Northern Distirect of Texas

Jurisdictional Statement

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May, 1974

INDEX

Page

The Opinions Below 2

Statement of the Grounds on Which the Jurisdiction of this Court is Invoked 2

Question Presented by the Appeal 3

Statement of the Facts of the Case 4

The Question Presented is Substantial 8

Conclusion 29

Appendix A-Judgment and Memorandum Opinion of District Court 1a

Appendix B - Notice of Appeal 1b

Appendix C - Full Text of:

Tex. Const. Art. VI, Section 3 (1955) 1c

Tex. Const. Art. VI, Section 3a (1955) 1c

Tex. Election Code Ann. Art. 5.03 (Supp. 1973) 2c

Tex. Election Code Ann. Art. 5.04(a) (Supp. 1973) 3c

Tex. Election Code Ann. Art. 5.07 (1967) 3c

Charter of the City of Fort Worth, Ch. 25, Section 19 ..... 4c

Appendix D - Factural Stipulations Taken From the Pre-Trial Order 1d

TABLE OF AUTHORITIES

CASES: Page

Associated Enterprises, Inc. v. Toltec Watershed Improvement District, 410 U.S. 743 (1973) ... 22, 23, 24, 25, 26, 27

Avery v. Midland County, 390 U.S. 474 (1968) 22, 23

Baker v. Carr, 369 U.S. 186 (1962) 10

Campbell v. Wright, 95 S.W. 2d 149 (Tex. Civ. App. 1936, no writ) 15

Carrington v. Rash, 380 U.S. 89 (1965) 9

Cipriano v. City of Houma, 395 U.S. 701 (1969) 3, 4, 10, 11, 12, 14, 16, 21

City of Phoenix v. Kolodziejski, 399 U.S. 204 (1970) 3, 10, 11, 12, 14, 21

DuBose v. Ainsworth, 139 S.W. 2d 307 (Tex. Civ. App. 1940, writ dis.) 13

Dunn v. Blumstein, 405 U.S. 330 (1972) 19, 20

Franklin v. Krause, 32 N.Y. 2d 234, 298 N.E. 2d 68 (1973) 25

Gray v. Sanders, 372 U.S. 368 (1963) 10

Hadley v. Junior College District, 397 U.S. 50 (1970) 22

Handy v. Holman, 281 S.W. 2d 356 (Tex. Civ. App. 1955, no writ) 14, 15

Harper v. Virginia Board of Electors, 383 U.S 663 (1966) 9, 17, 24

TABLE OF AUTHORITIES

CASES: Page

Kramer v. Union Free School District No. 15, 395 U.S. 621 (1969) 4, 10, 11, 12, 14, 16, 19, 20, 21, 27

Lassiter v. Northampton Election Board, 360 U.S. 45 (1959) 9, 18

Lucchese v. Mauermann, 195 S.W. 2d 422 (Tex. Civ. App. 1946, writ ref. n.r.e.) cert. denied, 329 U.S. 812 (1947) 15

Markowsky v. Newman, 134 Tex. 440, 136 S.W. 2d 808 (1940) 15

McDonald v. Board of Election Commissioners of Chicago, 394 U.S. 802 (1969) 16, 20, 27

McGowan v. Maryland, 366 U.S. 420 (1961) 19, 21, 29

Minor v. Happersett, 88 U.S. (21 Wall) 162 (1875) 24

Montgomery Independent School District v. Martin, 464 S.W. 2d 638 (Tex. 1971) 14, 27

Oregon v. Mitchell, 400 U.S. 112 (1970) 19

Police Jury of Vermillion Parish v. Hebert, 404 U.S. 807 (1971) 21

Pope v. Williams, 193 U.S. 621 (1904) 19

Reynolds v. Sims, 377 U.S. 533 (1964) 10, 18, 23

Richter v. Martin, 342 S.W. 2d 342 (Tex. Civ. App. 1961, no writ) 15

Rosario v. Rockefeller, 410 U.S. 752 (1973) ... 16, 17, 24, 25

TABLE OF AUTHORITIES

CASES: Page

Royalty v. Nicholson, 411 S.W. 2d 565 (Tex. Civ. App. 1967, writ ref. n.r.e.) 15

Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973) 3, 20, 22, 23 24, 25, 26, 27

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 23, 24

Stewart v. Parish School Board of Parish of St. Charles, 310 F. Supp. 1172 (E.D. La. 1970), aff'd mem., 400 U.S. 884 ..... 13, 14, 21

Texas Public Utilities Corporation v. Holland, 123 S.W. 2d 1028 (Tex. Civ. App. 1939, writ dis.) 14, 15

STATUTES:

Texas Revised Civil Statutes Ann.
Art. 709d (Supp. 1973) 6
Art. 7145 (1960) 13

Texas Election Code Annotated
Article 5.03 (Supp. 1973) 3
Article 5.04(a) (Supp. 1973) 3
Article 5.07 (1967) 3

Charter of the City of Fort Worth, Ch. 25, Section 19 3

United States Code:
Title 28 U.S.C. Section 1253 3
Title 28 U.S.C. Section 2101 (b) 3
Title 28 U.S.C. Section 2281 ..... 2, 6
Title 28 U.S.C. Section 2284 ..... 2, 6
Fed. Rules Civ. Proc. Rule 23, 28 U.S.C.A 2, 6

TABLE OF AUTHORITIES

Page

CONSTITUTIONAL PROVISIONS:

Constitution of the United States
Fourteenth Amendment 2, 3, 6, 7, 10, 12, 18

Constitution of Texas
Tex. Const. Art. VI, Section 3 (1955) 3
Tex. Const. Art. VI, Section 3a (1955) 3, 4

OTHER AUTHORITIES:

Lee, *Mr. Herbert Spencer and the Bachelor Stockbroker: Kramer v. Union Free School District No. 15*, 15 Ariz. L. Rev. 457-477 (1973) 25

The Supreme Court, 1972 Term, 87 Harv. L. Rev. 94-105 (1973) 25

IN THE

SUPREME COURT OF THE UNITED STATES
STATES

No. _____

John L. Hill, Attorney General of Texas
Appellant,

v.

Michael L. Stone, et al.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS

Jurisdictional Statement

Appellant appeals from the judgment of the United States District Court for the Northern District of Texas, Fort Worth Division, entered on March 25, 1974, granting a permanent injunction against appellant, and submits this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

THE OPINIONS BELOW

The opinion of the three-judge federal court sitting as the District Court for the Northern District of Texas, Fort Worth Division, is unreported as of this date. Copies of the judgment and the memorandum opinion are attached hereto as Appendix A.

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

(i) This suit was brought before a three-judge federal court under 28 U.S.C. §§ 2281 and 2284, as a class action pursuant to F.R. Civ. P. 23. By this suit, appellees sought to enjoin appellant from applying certain Texas constitutional and statutory election laws, as well as certain provisions of the Charter of the City of Fort Worth, Texas, which qualify the right to vote in general obligation tax bond elections upon the rendering of real, personal, or mixed property for taxation, as being in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

(ii) The judgment sought to be reviewed is the ruling of the District Court granting a permanent injunction against appellant. That judgment was entered on March 25, 1974. The Notice of Appeal was filed in the District Court for the Northern District of Texas, Fort

Worth Division, on April 18, 1974 and is attached hereto as Appendix B.

(iii) The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, United States Code, Sections 1253 and 2101 (b).

(iv) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

> *Salyer Land Co. v. Tulare Lake Basin Water Storage District,* 410 U.S. 719 (1973);
> *City of Phoenix v. Kolodziejski,* 399 U.S. 204 (1970);
> *Cipriano v. City of Houma,* 395 U.S. 701 (1969).

(v) The validity of Tex. Const. Art. VI, Sections 3 and 3a, Tex. Election Code Ann. Art. 5.03 (Supp. 1973), Tex. Election Code Ann. Art. 5.04(a) (Supp. 1973), Tex. Election Code Ann. Art. 5.07 (1967), and the Charter of the City of Fort Worth, Ch. 25, Section 19, are here involved. The full text of these laws are set forth in Appendix C hereto.

QUESTION PRESENTED BY THE APPEAL

The following question is presented by this appeal:

> Are Texas election laws limiting the franchise in general obligation tax bond elections to persons who own taxable property which has been rendered for taxation consistent with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution?

STATEMENT OF THE FACTS OF THE CASE

Article VI, Section 3a, of the Texas Constitution provides that voters voting on bond issues which will be paid in whole or in part from tax revenues must be "only qualified electors who own taxable property in the . . . political subdivision . . . where such election is held, and who have duly rendered the same for taxation, . . . " In 1969, when it first became apparent from the decisions of this Court in *Cipriano v. Houma,* 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969), and *Kramer v. Union Free School District No. 15,* 395 U.S. 621, 89 S. Ct. 1886, 23 L.Ed. 2d 583 (1969), that the above and related provisions of the Texas Constitution and Statutes might be incompatible with the United States Constitution, the Texas Attorney General's Office, and the bond industry and their attorneys, devised a dual-box election procedure whereby at each tax bond election two separate ballot boxes are provided. In one box only resident qualified electors who own taxable property and who have duly rendered the same for taxation are allowed to vote, and in the other box, all other resident qualified electors (who are otherwise qualified, but do not own taxable property which has been duly rendered for taxation) are allowed to vote. The votes cast in each box are recorded separately, and the returns are canvassed in such manner as reflects separately the votes cast by the two respective groups of electors.

Bonds have only been approved by the Texas Attorney General if a majority of the property owners who

have rendered their property approved, and if additionally, a majority of all voters approved. This procedure assured that bonds issued were compatible with both the Texas Constitution and the United States Constitution. The dual-box election procedure was followed in the general obligation tax bond election made the subject of this case.

On April 11, 1972, the City of Fort Worth held a tax bond election to seek authorization to issue bonds to build a library system. The ordinance authorizing the election stated that the election was to ". . . be held and conducted, in effect, as two separate but simultaneous elections, to-wit: one election at which only the resident, qualified electors who own taxable property in the City and who have duly rendered the same for taxation shall be entitled to vote on said propositions, and another election at which all other resident, qualified electors of the City shall be entitled to vote on said propositions. The votes cast at each of said separate but simultaneous elections shall be recorded, returned, and canvassed separately."

The result of the election was as follows:

Owners of Property Rendered for Taxation

FOR	**10,849**
AGAINST	**12,234**

Non-Renderers

FOR	**3,758**
AGAINST	**1,132**

TOTAL FOR:	**14,607**
TOTAL AGAINST:	**13,366**

On April 17, 1972, the City Council approved and adopted the election and, thereafter, acting pursuant to the Texas election laws, refused to sell the library bonds. On that same day, the appellees filed a class action pursuant to F.R. Civ. P. 23 requesting that a three-judge district court be convened under the authority of 28 U.S.C. Sections 2281 and 2284.

John L. Hill, Attorney General of Texas, was joined as defendant because Texas law requires that said official certify the legal validity of the proposed municipal bond issue. Tex. Rev. Civ. Stat. Ann. Art. 709d (Supp. 1973). After the bonds have been approved by the Attorney General, Texas statutes provide that they are incontestable except for fraud and unconstitutionality.

Appellees requested the District Court to declare the Texas election laws involved to be in irreconcilable conflict with the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Appellees further requested the District Court to enjoin

appellants from giving any force or effect to the Texas election laws in controversy as they might relate to the outcome of the bond election held on April 11, 1972, or any other such elections thereafter held.

The case was submitted to the District Court on stipulated facts as they appeared in pages 19 through 43 of the District Court's Pre-Trial Order entered on November 8, 1972 and said factual stipulations are attached hereto as Appendix D.

On March 25, 1974, the three-judge court entered a judgment and opinion (Appendix A) declaring the questioned Texas election laws to be in violation of the Fourteenth Amendment to the United States Constitution and enjoined appellants from giving any force or effect to said laws. The District Court stayed its judgment for ten days to enable the parties to submit an application for stay to the Circuit Justice, the Supreme Court, or a Justice thereof.

On the 2nd day of April 1974, appellant filed a Motion to Modify Judgment and/or for Partial Stay in the District Court requesting a modification of the judgment to provide that the Texas dual-box election procedure in bond elections be continued pending the final outcome of this cause before the Supreme Court. The District Court entered an order on April 9, 1974, denying the appellant's Motion. The District Court granted an additional five day stay of their judgment to enable

the parties to submit an application for stay to the Circuit Justice, the Supreme Court, or a Justice thereof.

Appellant field an application for a partial stay of the District Court's judgment with the Circuit Justice, Mr. Justice Powell, on April 15, 1974. The Circuit Justice requested a reply to appellant's application from appellees. Upon receipt of the reply, the Circuit Justice granted a partial stay of the District Court's judgment by order entered on April 25, 1974.

THE QUESTION PRESENTED IS SUBSTANTIAL

The issue involved in this appeal is of great importance to the State of Texas and the political subdivisions thereof, as well as more than one-fourth of all the states which in one manner or another qualify the right to vote in general obligation bond elections on the basis of property ownership or taxation. The importance of the issue is accentuated by its potential effect on the financing which is vital to the function of the states and their subdivisions in erecting and maintaining needed public improvements. In making a final determination of the issue involved in this appeal, this Court will unquestionably and substantially affect the functions of local government as well as the continued viability of reasonable state voting qualifications in this area.

The United States Supreme Court has been presented over the last decade with numerous controver-

sies concerning the qualifications which various states have placed upon the exercise of the franchise in state and local elections. Although each of the decisions of this Court have been concerned with the particular type of election at hand and its circumstances, those same decisions have been applied generally in virtually every area of election law by this Court as well as the various lower courts, state and federal.

As a general proposition, the states have ". . . broad powers to determine the conditions under which the right of suffrage may be exercised." *Lassiter v. Northampton Election Board*, 360 U.S. 45, 50 (1959). This Court in *Lassiter* determined that voter qualification requirements may be sustained either when they promote intelligent or responsible voting (voting competence) or when they perform either of these functions in a decision upholding North Carolina's literacy requirement. This Court also cited as constitutionally permissible qualifications based on age, residence, and previous criminal record.

In keeping with the principle of *Lassiter*, this Court has condemned voter qualifications which bear no demonstrable relation to the promotion of intelligence and responsibility in voting. *Carrington v. Rash*, 380 U.S. 89 (1965) (military personnel); and *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (poll tax).

An equally important basic premise stressed by this Court is that the issues in any election should be de-

cided by a majority of the people concerned with the outcome. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Gray v. Sanders*, 372 U.S. 368 (1963); and *Baker v. Carr*, 360 U.S. 186 (1962). However, ". . . once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." *Harper*, supra.

In 1969 and 1970, this Court rendered several decisions holding invalid state laws which selectively granted the right to vote on grounds that they denied equal protection under the Fourteenth Amendment. The first of these decisions was *Kramer v. Union Free School District No. 15*, 395 U.S. 621 (1969). In *Kramer*, this Court struck down a New York statute which granted the right to vote in a local school board election only to those who owned or leased taxable real property in the district or were parents or custodians of children enrolled in the public schools. On the same day this Court decided *Kramer*, it also handed down *Cipriano v. City of Houma*, 395 U.S. 701 (1969). The *Cipriano* decision invalidated a Louisiana statute which permitted only property owners to vote on the question of approving bonds that were to be financed exclusively from the revenues of a municipal public utility. The third important decision was *Phoenix v. Kolodziejski*, 399 U.S. 204 (1970), in which an Arizona constitutional limitation of the franchise in general obligation bond elections to persons who are qualified electors and also real property taxpayers, was held to be in violation of the Equal Protection Clause.

The decisions of this Court in *Cipriano* and *Kramer* were carefully reviewed by appellant, Texas Attorney General, with respect to their application to the Texas election laws governing general obligation tax bond elections. No changes in Texas voter qualifications were deemed necessary in light of those decisions because this Court's opinions were not inclusive of the facts or the law surrounding Texas tax bond elections. However, in order to protect the outstanding public securities of this State and to insure that any subsequently voted securities would not be subject to attack based upon a controlling, unfavorable decision of the *Phoenix* case, which was at that time pending in this Court, it was decided that tax bond propositions should be covered by a dual-box election.

The result of this dual-box election policy was to require that issuers of tax bonds be required to meet all the voter qualification tests of the Texas Constitution and statutes, and in addition thereto, be required to submit tax bond propositions to the balance of the otherwise qualified electorate. Before approval would be given in the form of the Attorney General's opinion as to the validity of securities, any and all underlying propositions must have been approved not only by the owners of taxable property duly rendered, voting in a separate box, but also by the aggregate of all electors.

This policy was viewed originally as a temporary measure, on the assumption that the final determination of the *Phoenix* case would put the question to rest.

However, that decision did not settle the issue in Texas tax bond elections.

The precedents of *Kramer*, *Cipriano* and *Phoenix* constitute the framework for the District Court's judgment that the Texas constitutional and statutory qualifications for the exercise of the franchise in a general obligation tax bond election are in violation of the Fourteenth Amendment. The basic test announced in those cases and ostensibly applied by the District Court in this case requires that the Court determine whether the voter exclusions are ". . . necessary to promote a compelling state interest." *Kramer*, at 627.

There are significant differences between the three cases cited above and the provisions of the Texas election laws relevant to this case. In *Cipriano*, this Court held that ownership of property, as a restriction, is irrelevant to an election for the approval of bonds that would be financed by revenues of a public utility, thereby substantially and directly affecting property owners and non-property owners alike. The present case does not concern revenue bonds. Both *Kramer* and *Phoenix* basically involved voting restrictions based on *real* property taxation under circumstances which indicated that such a classification excluded many persons significantly affected by way of both burden and benefit. Pointedly, this Court in *Phoenix* limited its review to this question: "Does the Federal Constitution permit a State to restrict to real property taxpayers the

vote in elections to approve the issuance of general obligation bonds?" The Texas law does not restrict voting rights to owners of real property. Indeed, under Tex. Rev. Civ. Stat. Ann. Art. 7145 (1960), "All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation and the same shall be rendered and listed as herein prescribed."

Stewart v. Parish School Board of Parish of St. Charles, 310 F. Supp. 1172 (E.D. La. 1970), aff'd mem., 400 U.S. 884, 27 L. Ed. 2d 129, 91 S. Ct. 136, is another case in the progression which needs discussion. The United States District Court for the Eastern District of Louisiana struck down Louisiana statutes which restricted eligibility to vote in tax bond elections to property taxpayers and also weighted each elector's vote by the monetary value of his assessed property. The District Court said that the affluence of the voter was not such a compelling state interest as to justify the denial of the vote to some and the dilution of the votes of the majority. Texas has no such problem. It is immaterial to the right to vote in a bond election whether one's ownership of property be great or small. *DuBose v. Ainsworth*, 139 S.W. 2d 307 (Tex. Civ. App. 1940, writ dis.). Also, in *Stewart*, the District Court noted in footnote three (page 1173) that under Louisiana law the term "property taxpayer" equates with the term "real property taxpayer" or "landowner". Texas makes no such distinction and, to the contrary, generates a substantial amount of tax revenues from personal property as evi-

denced in the attached Pre-Trial Order (Appendix D, Stip. #24A).

In *Montgomery Independent School District v. Martin*, 464 S.W. 2d 638 (Tex. 1971), the Texas Supreme Court faced the precise issue of this case. After consideration of the *Kramer, Cipriano, Phoenix* and *Stewart* cases, the Court determined that,

> "Unlike those restrictive voting laws which have been declared unconstitutionally narrow and limited, the laws in Texas have consistently granted the right to vote in general obligation bond elections to all who own personal property as well as to those who own real property. Texas Public Utilities Corporation v. Holland, 123 S.W. 2d 1028 (Tex. Civ. App. 1939, writ dis.). In Handy v. Holman, 281 S.W. 2d 356 (Tex. Civ. App. 1955, no writ), the right to vote of forty resident citizens was challenged because immediately before participating in a bond election, they had each rendered personal property valued at $100 for the very purpose of voting in a bond election. The court upheld their right to vote and also said that electors should not be 'parsed' out of their constitutional right to vote by reason of any shortcoming in compliance with statutory requirements concerning the proper and timely rendition of personal property.
>
> It is the contention of the Attorney General, and we agree, that voter qualifications of ownership under the Texas constitutional and statutory provisions stated above, as interpreted by our decisions, are so universal as to constitute no impediment to any elector who really desires to vote in a bond election. A voter is qualified if he renders any kind of property of any value, and he need not have actually paid the tax.

The quoted provisions of the Constitution and the Education Code requiring the property owner to duly render his property for taxation have been often construed by the Texas courts in connection with voting rights. Property is 'duly rendered' within the meaning of the Texas Constitution if the property is placed on the tax rolls by the tax assessor instead of by the property owner. Texas Public Utilities Corporation v. Holland, supra, or by some other person such as a husband, partner, agent or co-tenant and even though the owner's name may not appear on the tax rolls; Markowsky v. Newman, 134 Tex. 440, 136 S.W. 2d 808 (1940); Royalty v. Nicholson, 411 S.W. 2d 565 (Tex. Civ. App. 1967, writ ref. n.r.e.); Lucchese v. Mauermann, 195 S.W. 2d 422 (Tex. Civ. App. 1946, writ ref. n.r.e.), cert. denied, 329 U.S. 812, 91 L.Ed. 693, 67 S. Ct. 633 (1947); Richter v. Martin, 342 S.W. 2d 342 (Tex. Civ. App. 1961, no writ); Campbell v. Wright, 95 S.W. 2d 149 (Tex. Civ. App. 1936, no writ); or when one makes his rendition out of time and for the very purpose of qualifying as a voter. Markowsky v. Newman, supra; Handy v. Holman, 281 S.W. 2d 356 (Tex. Civ. App. 1955, no writ).

It thus appears that those who own anything can vote in a bond election if they render their property; and they are deemed by the decisions of Texas to have rendered their property if they get their property on the rolls in any manner in advance of the election. In our opinion, the requirement that the voter in a general obligation bond election must get his property on the rolls is in the interest of sound government and affords equal treatment of all citizens. One who is willing to vote for and impose a tax on the property of another should be willing to assume his distributive share of the burden. This is the manner in which the Texas Constitution, as approved by the entire citizenry of the state, provides inducement for those who wish to participate

inthe decision making process in a School District to assume their rightful portion of the burden they help to create."

***

"To disclose one's share of the total burden for which he is responsible in a bond election requires no more than the law universally expects. To allow some property owners to vote in that kind of an election, and at the same time to permit them to avoid their fair share of the resulting obligation, would confer preferential rights. This would be a denial of equal protection to another segment of citizens."

This Court, in *Kramer* and *Cipriano*, left open the question of whether a state might under some set of circumstances qualify the franchise by limiting access to the ballot to those "primarily interested."

Appellant further contends that the Texas election laws do not create a classification at all. Since Texas law subjects *all* property to taxation, the only additional qualification required for eligibility to vote in a general obligation bond election is that of rendering property for taxation. Electors, such as appellees, who have either ignored or who refuse to comply with their legal duty to render their property simply disenfranchise themselves. Also, as was the situation in the absentee ballot case of *McDonald v. Board of Election Commissioners of Chicago*, 394 U.S. 802, 807 (1969), there is no evidence that the applicable Texas election laws absolutely prohibit anyone from exercising the franchise. *Kramer*, at 627. More recently in *Rosario v. Rockefeller*, 410 U.S. 752 (1973), this Court, in reviewing cases cited for the proposition that the New York political party enrollment deadline disenfranchised otherwise qualified voters unconstitutionally, stated at 36 L. Ed. 2d 6 and 7:

"In each of those cases, the State totally denied the electoral franchise to a particular class of residents, and there was no way in which the members of that class could have made themselves eligible to vote. . .

***

Hence, if their (petitioners) plight can be characterized as disenfranchisement at all, it was not caused by § 186, but by their own failure to take timely steps to effect their enrollment."

The District Court characterized this contention as capable of supporting an impermissible poll tax. *Harper v. Virginia State Board of Electors*, 383 U.S. 663 (1966). Also, the District Court concluded that *Rosario* was inapplicable here because New York's enrollment requirement ". . . was a reasonable state effort to preserve the integrity of the electoral process, a goal the Court called 'legitimate and valid.' The Texas rendering requirement, by contrast, is primarily an attempt to aid the states' taxation efforts, and is not designed to protect or improve the electoral process."

The District Court, although certainly recognizing the tax collection aspects of the Texas rendering sys-

tem, failed to recognized the valid state interest in protecting the integrity and quality of the electoral process through the rendering requirement. Since only property renderers will ever be called upon to repay the bonded indebtedness, and the definition of property in Texas is so universal in scope, the state has a sufficient interest in seeking to exclude those not "primarily interested" in the election subject. Indeed, it is essentially the responsibility of the state to establish reasonable "... standards designed to promote the intelligent use of the ballot." *Lassiter*, at 51. In light of this duty, it is entirely rational for the Texas election laws to exclude non-renderers in tax bond elections since they have no cognizable incentive to vote either cautiously or intelligently. Indeed, non-renderers have no reason to vote against any such tax proposal at all. Such a non-renderer would stand to reap benefit without corresponding burden. By excluding those otherwise qualified voters who refuse to render their own property according to the laws of this State while attempting to impose a tax on the property of others, the Texas election laws create a minimal qualification requirement which serves to protect and enhance the electoral process, whereas a poll tax is nothing more than a fee for the privilege of voting, having nothing to do with voter qualifications.

In *Reynolds v. Sims*, 377 U.S. 533 (1964), this Court summarized the historical application of the Fourteenth Amendment stating that ". . . the concept of equal protection has been traditionally viewed as re-

quiring the uniform treatment of persons standing in the same relation to the governmental action questioned or challenged." This Court has recognized that the traditional application of the Equal Protection Clause was restricted to a view of the "reasonableness" of the state classification made the subject of complaint. *McGowen v. Maryland*, 366 U.S. 420, 426 (1961). Indeed, it was not until *Kramer* that state voter qualifications came under the full impact of the strict judicial scrutiny of the compelling-state-interest test. *Dunn v. Blumstein*, 405 U.S. 330, 363 (1972) (Blackmun, J., concurring).

Mr. Chief Justice Burger dissenting in *Dunn* pointedly described the impracticality of the compelling-state-interest test stating that

> "The holding of the Court in Pope v. Williams, 193 U.S. 621, 24 S. Ct. 573, 48 L.Ed. 817 (1904), is as valid today as it was at the turn of the century. It is no more a denial of equal protection for a State to require newcomers to be exposed to state and local problems for a reasonable period such as one year before voting, than it is to require children to wait 18 years before voting. Cf. Oregon v. Mitchell, 400 U.S. 112, 91 S.Ct. 260, 27 L. Ed. 2d 272 (1970). In both cases some informed and responsible persons are denied the vote, while others less informed and less responsible are permitted to vote. Some lines must be drawn. To challenge such lines by the 'compelling state interest' standard is to condemn them all. So far as I am aware, no state law has ever satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection."

Mr. Chief Justice Burger's dissent in *Dunn* foreshadowed the rendition of four decisions by this Court in 1973 which further illustrate the inadequacy of the compelling-state-interest test as an equal protection standard, as well as confining it to restricted circumstances, if not actually forewarning of its eventual demise.

In *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), Mr. Justice Rehnquist expressing the view of six members of this Court held that the provisions of the California Water Code which permitted only landowners to vote in water storage district general elections and by apportioning votes in the election according to the assessed valuation of the land to be constitutionally permissible. This Court went to great lengths to explain that by reason of the water storage district's limited purpose and its disproportionate effect on landowners as a group, the California laws did not deny equal protection by limiting the franchise to district landowners, thereby denying the vote to non-landowner residents, even though they may be farm lessees, or by weighting votes according to the assessed valuation of the land. Although obviously dealing with state qualifications on the franchise which "absolutely prohibited" interested persons, otherwise qualified to vote, from exercising the franchise, *Kramer*, at 627; *McDonald*, at 807-808, this Court in *Salyer* refused to apply the compelling-state-interest test. Rather, this Court returned to the more

practical *McGowan* test stating that

> ". . . the question for our determination is not whether or not we would have lumped them together had we been enacting the statute in question, but instead whether 'if any state of facts reasonably may be conceived to justify' California's decision to deny the franchise to lessees while granting it to landowners. McGowan v. Maryland, 366 U.S. 420, 426, 6 L. Ed. 2d 393, 81 S. Ct. 1101 (1961).

Mr. Justice Douglas, speaking for the dissent stated that

> "Provisions authorizing a selective franchise are disfavored, because they 'always pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives.' Kramer v. Union School District, 395 U.S. 621, 627, 23 L. Ed. 2d 583, 89 S. Ct. 1886. In order to overcome this strong presumption, it had to be shown up to now (1) that there is a compelling state interest for the exclusion, and (2) that the exclusions are necessary to promote the State's articulated goal. Phoenix v. Kolodziejski, supra; Cipriano v. City of Houma, 395 U.S. 701, 23 L. Ed. 2d 647, 89 S. Ct. 1897; Kramer v. Union School District, supra. See also Police Jury of Vermillion Parish v. Hebert, 404 U.S. 807, 30 L. Ed. 2d 39, 92 S. Ct. 52; Stewart v. Parish School Board of St. Charles, 310 F. Supp. 1172, aff'd., 400 U.S. 884, 27 L. Ed. 2d 129, 91 S. Ct. 136."

The dissent went on to point out that the characterization of the water storage district as a "special-purpose unit of government assigned the performance of func-

tions affectiving definable groups of constitutents more than other constituents," citing *Avery v. Midland County*, 390 U.S. 474, 485 (1968), was unrealistic in view of *Hadley v. Junior College District*, 397 U.S. 50 (1970). This Court in *Hadley* applied the compelling state interest test because the special purpose junior college district exercised generalized powers which "... while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees *perform important governmental functions ... and have sufficient inmpact throughout the district* to justify the conclusion that the principle which we applied in *Avery* should also be applied here." (Emphasis added by the Court).

On the same day that *Salyer* was handed down, this Court rendered a per curiam decision in *Associated Enterprises, Inc. v. Toltec Watershed Improvement District*, 410 U.S. 743 (1973). In *Associated Enterprises*, this Court determined that a Wyoming law providing that a watershed district could be established only by referendum in which only landowners could vote and their votes were weighted according to acreage owned was constitutionally valid. Again, this Court based its decision on the premise that the watershed district was a special-purpose unit of government with limited purposes. Quite significantly however, this Court went on to note that no denial of equal protection was involved because the challenged statute "... was enacted by a legislature in which all of the State's electors have the

unquestioned right to be fairly represented ..." and because the popularly-elected board of supervisors of the affected conservation district must approve the creation of a watershed district. Id. , at 744 and 745.

The popular representation of all qualified voters in Texas at the state level, like those in Wyoming, is unquestioned through compliance with *Reynolds*. Likewise, there is no question that Appellees are adequately and fairly represented by the popularly-elected City Council of Fort Worth under the holding of *Avery*. Therefore, the only distinction between the non-landowner residents' relationship to the elections in *Salyer* and *Associated Enterprises* compared with the relationship of the non-rendering appellees to the tax bond elections is the difference between a "special-purpose district" and a special purpose bond election. Certainly this is a distinction without a difference.

In a third decision rendered the same day as *Salyer* and *Associated Enterprises*, this Court determined in *San Antonio Independent School District v. Rodriquez*, 411 U.S. 1, 36 L. Ed. 2d 16, 93 S. Ct. 1278 (1973) that the Texas dual approach to public school financing was constitutional. Mr. Justice Powell speaking for the majority upheld the Texas school financing system against an equal protection challenge. The Texas school financing system, to a significant degree, apportioned school district revenues on the basis of the value of taxable property in the district. The varying wealth of each district resulted in disproportionate school revenues

being allocated to the different districts. Although no compelling reason for the Texas system was apparent, the constitutionality of the system was upheld because the majority concluded that it was rational. The compelling-state-interest test was not applied because the "fundamental" interest necessary to invoke strict judicial scrutiny was found lacking.

Significantly, this Court in *Rodriquez* decided to restrain the expansion of the "fundamental" rights analysis in equal protection cases. In the past, this Court had extended the "fundamental" rights approach to voter qualification cases even though such rights were not explicitly found in the United States Constitution. *Rodriguez,* (Marshall, J., dissenting). Furthermore, the Constitution of the United States has never specifically guaranteed the right to vote in state elections. *Minor v. Happersett,* 88 U.S. (21 Wall.) 162 (1875); *Harper,* 383 U.S. at 665; *Rodriguez,* 36 L. Ed. 2d at 44.

This Court's decisions in *Salyer, Associated Enterprises, Rodriguez,* and *Rosario v. Rockefeller,* 410 U.S. 752 (1973) have been interpreted as follows:

> "In the context of voter qualifications, neither history, reason nor the Court's opinions in Salyer and Associated Enteprises suggest any basis for a distinction based upon the generality of governmental services offered. Voter qualification problems do not involve the same political sensitivities as apportionment problems, and there is no history

> of refusal to decide voter qualification cases on the grounds of non-justiciability. Accordingly, a logical inference from the limitation on the compelling state interest test as an equal protection standard in voter qualification cases to elections for officials of local units of government exercising general governmental powers is a dissatisfaction with the basic rule being limited, and a determination, at the very least, not to permit its further expansion. The recent decision in Rosario v. Rockefeller holding the compelling interest standard inapplicable to procedural limitations on voting qualifications further bears this out."

Lee, *Mr. Herbert Spencer and the Bachelor Stockbroker: Kramer v. Union Free School District No. 15,* 15 Ariz. L. Rev. 457-477 (1973). See also, *The Supreme Court, 1972 Term,* 87 Harv. L. Rev. 94-105 (1973).

The decisions of this Court in *Salyer* and *Associated Enterprises* were also analyzed by the Court of Appeals of New York in *Franklin v. Krause,* 32 N.Y. 2d 234, 298 N.E. 2d 68, 71 (1973). The Court there determined that the plan of apportionment and voting for the Nassau County board of supervisors and the system of weighted voting involved were not in violation of the Equal Protection Clause. The Court, 298 N.E. 2d at 71, stated in a footnote that:

> "In two very recent cases it was held that special-purpose units of government such as water and sewage districts could operate outside strict one man, one vote principles because they affected 'definable groups of constituents more than other constituents', and that certain groups could thus

have disproportionate voting power (Salyer Land Co. v. Tulare Lake Basin Water Stor. Dist., 410 U.S. 719, 93 S. Ct. 1224, 35 L. Ed. 2d 659 (1973); Associated Enterprises v. Toltec Watershed Improvement Dist., 410 U.S. 743, 93 S. Ct. 1237, 35 L. Ed. 2d 675 (1973). These decisions do not specifically extend to units of general local government apportionment such as we find in the instant case. There may be, however, further indication in these cases that the Supreme Court does not demand strict one man, one vote principles at the local level."

Significantly, that Court interpreted the *Salyer* and *Associated Enterprises* decisions as indicating this Court's intention to return the question of general local government apportionment plans, from a constitutional standpoint, to the "reasonableness" standard.

Judge Thornberry, in his Memorandum Opinion in this case, argues that the interest of the State of Texas in limiting the electorate to those who will be primarily affected by its outcome, i.e., those upon whom the financial burden created by the bonds will fall, is insufficient to withstand judicial scrutiny. Although Judge Thornberry admits that the principal and interest on the bonds will be paid solely from taxes on real, personal and mixed property rendered by the City's taxpayers, he concludes that the Texas laws exclude non-renderers who arguably will contribute to the repayment of the bonds indirectly through rents and purchased goods. Also, Judge Thornberry argues that the *present* rendering voters will not be exactly the same renderers

who will eventually repay the bonds due to "upward mobility" of the people and other factors.

Judge Thornberry's analysis fails to consider two important factors: first, the tax bond election will unquestionably have a direct and "disproportionate effect" on renderers, *Salyer*, at 728; *Associated Enterprises*, at 744; second, the Texas general obligation tax bond election laws do not absolutely prohibit anyone from rendering any item of property, and, therefore, qualify to vote. *Montgomery Independent School District; Kramer;* and *McDonald*. Furthermore, all those non-renderers who "indirectly" contribute to the payment of property taxes as lessees or purchasers of goods are in positions analogous to the lessees in *Salyer*. The Court in *Salyer* noted that the lessees had interests in the activities of the water storage district quite similar to that of landowners. However, this Court determined that those lessees could *bargain* with their lessors for the franchise by proxy. Also, it was reasoned that ". . . just as the lessee may by contract be required to reimburse the lessor for the district assessments so he may by contract acquire the right to vote for district directors." *Salyer*, at 733. Therefore, the lessees were not absolutely disenfranchised nor were they denied equal protection, although excluded from the franchise by state law, even though their lease contracts *required* the lessee to carry the proportionate share of the districts financial burden ostensibly assessed against and to be paid by his lessor. Obviously, non-renderers are

not denied equal protection of the laws by virtue of the Texas rendering qualification since they have either ignored or refused to render some item of property, as required by law, even though they may be indirectly contributing to the payment of taxes which will be used to retire the bond indebtedness made the subject of the election. Judge Thornberry's concern with the fact that the present voting renderers will not be the same ones who will eventually repay the bonds simply fails to recognize the fact that the *exact* same voters who cast votes in *any* election of any duration, will not be the exact same people who will have to abide by that decision as time passes.

CONCLUSION

This appeal raises an issue of fundamental importance to both the public improvement financing system and voter qualification standards of the states and their political subdivisions. This Court has never directly considered the facts nor the law applicable to the Texas election laws involved in this appeal. The recent decisions of this Court evidence a willingness to reconsider and apply the "reasonableness" test of *McGowan* as an equal protection standard regarding the issue of voter qualifications at the local government level. Therefore, it is submitted that the question presented by this appeal is so substantial as to require plenary consideration, with briefs on the merits and oral argument, for its consideration.

Respectfully submitted,

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APPENDIX A

Judgment and Memorandum Opinion of District Court

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

Michael L. Stone, et al.,	()	
	()	
Plaintiffs,	()	
	()	
	()	
	()	
versus	()	Ca-4-1975
	()	
	()	
	()	
The City of Fort Worth,	()	
et al.,	()	
	()	
Defendants	()	

JUDGMENT

This cause having come on for trial at which all parties were present by counsel; and the Court having considered the pleadings, evidence and argument of counsel and being of the view that a decree should be entered in accordance with the opinion of the Court, which also constitutes the Court's findings of fact and conclusions of law under F.R. Civ. P. 52 (a), filed this date, it is therefore ORDERED, ADJUDGED and DECREED:

FIRST. That the individually named plaintiffs in this action represent a class of plaintiffs composed of all those casting ballots in favor of Proposition Two in the election held by the City of Fort Worth on April 11, 1972.

Second. That Article VI, Section 3 and Section 3a of the Texas Constitution, Articles 5.03, 5.04, and 5.07 of the Texas Election Code, and Section 19, Chapter 25, of the Fort Worth City Charter are hereby declared unconstitutional insofar as they condition the right to vote in bond elections on citizens' rendering property for taxation.

Third. The defendants herein, their respective agents, servants, employees and successors, are hereby enjoined and prohibited from giving any force or effect to the laws named in paragraph second, insofar as they

are now constitutionally invalid, in assessing the validity of votes cast in Fort Worth's April 11, 1972, election by persons who had not rendered taxable property in such City for taxation. The defendants shall consider Proposition Two (library bonds) to have been approved by the voters participating in that election. This shall not be construed as compelling the issuance of such bonds by the City of Fort Worth.

Fourth. The defendants herein, their respective agents, servants, employees and successors, are hereby enjoined and prohibited from giving any force or effect to the laws named in paragraph second in any bond election held from this date on, insofar as those laws require citizens to render taxable property in such City for taxation as a prerequisite to voting.

Fifth. This decree is intended in no way to render invalid bond elections already held or bonds already issued.

Sixth. This judgement shall be stayed for the period of ten days to enable the parties to submit an application for stay to the Circuit Justice, the Supreme Court, or a Justice thereof.

Dated this 25th day of March, 1974.

Homer Thornberry
United States Circuit Judge

Leo Brewster
United States District Judge

Halbert O. Woodward
United States District Judge

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

Michael L. Stone, et al.,	()	
	()	
Plaintiffs,	()	
	()	
	()	
	()	
versus	()	CA-4-1975
	()	
	()	
	()	
The City of Fort Worth, et al.,	()	
	()	
	()	
Defendants	()	

Before THORNBERRY, Circuit Judge, and BREWSTER and WOODWARD, District Judges.

MEMORANDUM OPINION

THORNBERRY, Circuit Judge:

This class action challenges the constitutionality of state and city laws which restrict suffrage in bond elections to persons who have made available for taxation some item of real, personal, or mixed property.[1] We believe the defendants[2] have failed to demonstrate that this diminution of the electorate is necessary to promote a compelling state interest and therefore declare the provisions attacked to be in violation of the equal protection clause of the Fourteenth Amendment.

I.

On April 11, 1972, the city of Fort Worth, Texas, held a bond election that submitted to the voting public two proposed bond issues, one for transportation bonds and one for library bonds. The voters approved the transportation bonds without incident, and the bonds have been sold. The library bonds were not so successful.

Under the laws of Texas[3] and the city charter of Fort Worth,[4] one must have some item of property on the tax rolls to be eligible to vote in a bond election. The property may be of any tpe—real, personal, or mixed. It can be of any value so long as it is not covered by an exemption.[5] One's eligibility depends upon his making the property available for taxation ("rendering" it), not

upon paying the tax. In theory at least, one might gain eligibility by rendering his wrist watch, clothing, or any common item of personal property.

The Texas Supreme Court has held that the rendering requirement is constitutional. Montgomery Independent School District v. Martin, 464 S.W.2d 638 (Tex. 1971). The U.S. Supreme Court, however, has held similar voting prerequisites unconstitutional.[6] To ensure the validity and marketability of the transportation and library bonds, should they be approved, the City of Fort Worth held two separate but simultaneous elections on April 11, 1972. This was done by separately tabulating the votes of those who owned taxable property in Fort Worth and had rendered it for taxation, and those who had not rendered property for taxation. Both groups, the renderers and the non-renderers, approved the transportation bonds by a majority vote. But the library bonds were given a mixed reception at the polls. A majority of the renderers rejected the proposal to issue library bonds, but the non-renderers approved it by a three-to-one margin. Adding together the votes of both groups showed that a majority of all the voters participating favored issuing the library bonds.[7] The net result was the library bonds could be sold only if the non-renderers were constitutionally entitled to vote despite the contrary Texas and Fort Worth laws. Convinced that the Texas rendering requirement was constitutionally valid, the city fathers of Fort Worth refused to sell the library bonds, precipitating this law-

The individual plaintiffs in this case seek to represent a class composed of all those who voted for Proposition Two, the library bonds. Having measured these representatives and their proposed class against the criteria of F.R. Civ. P. 23, we believe the class and representatives are proper. A total of 14,607 persons voted for Proposition No. 2, making the class too numerous for joinder of all. The class members have a common question of law: whether the provisions in question are consistent with the principles of equal protection. The claims of the representatives are identical with those of the class. The plaintiffs' excellent brief leaves no doubt that they will fairly and adequately protect the interests of the class. And the defendants have refused to act on grounds generally applicable to the class by blocking issuance of the bonds because existing law requires approval by a majority of the rendering property owners who cast ballots. Thus we conclude that this is a proper class action under F.R. Civ. P. 23(b)(2). Having established the plaintiffs' class character, we turn now to their grievance.

II.

Plaintiffs' equal protection arguments are bottomed upon the theory that the state, through its rendering requirement, has divided its otherwise eligible voters into two classifications, one of which cannot vote in bond elections. We think this theory is correct.

Defendants appear to argue that the state has made no one ineligible to vote and thus has created no classifications. They say that since Texas law subjects *all* property to taxation, anyone who is willing to render his property may vote. Voters choosing not to render their property simply disenfranchise themselves.* Defendants' argument proves too much; it would also support a poll tax, a practice long since declared an impermissible burden on the right to vote. Harper v. Virginia State Board of Electors, 1966, 383 U.S. 663, 86 S. Ct. 1079. The poll tax, too, was a trivial financial requirement that virtually everyone could meet. It is sheer sophistry to say the classes create themselves, or that the voters disenfranchise themselves, when the state requires would-be voters to meet requirements entirely irrelevant to the needs of sound election administration or voter competence.

We might add that we suspect the Texas rendering requirement has created a class of citizens who own too little property to merit a vote in bond elections. The record fails to indicate the number of people who render for taxation personalty other than automobiles, but we doubt that many do. *Cf.* Stewart v. Parish School Board, E.D. La. 1970, 310 F. Supp. 1172, *aff'd mem.*, 400 U.S. 884, 91 S. Ct. 136. If, as a practical matter, non-automobile personalty virtually is never rendered, and rendering an item of property is a prerequisite to voting, then Texas has disenfranchised an indeterminate number of citizens who possess neither real estate nor

car. Thus these laws on their face disenfranchise those who own property but do not render it, and in practice may well deny the ballot to a group of citizens whose possessions have been adjudged too meager.

III.

A brief survey of the relevant case law will place plaintiffs' case in perspective. We start with the proposition that the states have "broad powers to determine the conditions under which the right of suffrage may be exercised." Lassiter v. Northampton Election Board, 1959, 360 U.S. 45, 50, 79 S. Ct. 985, 989. But "once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Harper v. Virginia Board of Elections, 1966, 383 U.S. 663, 665, 86 S. Ct. 1079, 1081. *See* Evans v. Cornman, 1970, 398 U.S. 419, 90 S. Ct. 1752. When a state excludes citizens from the electorate, it must justify the exclusions under the harsh "compelling state interest" test. Kramer v. Union Free School District, 1969, 395 U.S. 621, 89 S. Ct. 1886; Cipriano v. City of Houma, 1969, 395 U.S. 701, 89 S. Ct. 1897; City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 S. Ct. 1990; Dunn v. Blumstein, 1972, 405 U.S. 330, 92 S. Ct. 995. The test has two steps: (1) whether the exclusions are necessary to promote the state's articulated interest and (2) whether the interest is compelling. *Kramer, supra.* To qualify as necessary, exclusions must be tailored with precision. *E.g., Dunn v.*

Blumstein, supra. And the state must pursue its compelling interest in the way that burdens constitutionally protected activity least. *Id.*

IV.

Defendants advance two state interests that are served by excluding non-renderers from bond elections. The first interest is limiting the ballot to those who have a financial stake in the election's outcome. This interest is based on notions of fairness: those whose taxes will service the bonds should be the only ones deciding whether the debt is worth undertaking. To permit non-renderers a "free ride," we are told, would be tantamount to depriving the renderers of their property without due process, and would at least constitute preferential treatment.

The other (and primary) interest advanced is the necessity of encouraging the citizens to render their property so that the public treasury will be fortified by an efficiently collected property tax. *See* Montgomery Independent School District v. Martin, 464 S.W. 2d 638 (Tex. 1971); Markowsky v. Newman, 136 S.W. 2d 808. (Tex. 1940). We shall subject these state interests to close judicial scrutiny and the compelling interest test.

We examine first the state's interest in limiting the electorate to those who will be primarily affected by its outcome, i.e., those who will pay the financial obliga-

tion created by the bonds. Defendants' argument is strengthened by the fact that the City of Fort Worth intends to issue general obligation bonds, not revenue bonds. Revenue bonds are serviced by the income from the enterprise they finance. General obligation bonds are serviced by general tax revenues. In this case the parties have stipulated that the proposed library bonds' principal and interest will be paid from taxes on real, personal, and mixed property rendered by the city's taxpayers. Thus the impact on property owners is significantly greater than it was in similar cases decided by the Supreme Court. For example, in City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 S. Ct. 1990, more than half of the debt service requirements were to be satisfied from taxes paid by nonproperty owners. By contrast, the Fort Worth library bonds will be serviced entirely by property taxes.

Despite the proposed bonds' direct impact on renderers, we are reluctant to say the state has a compelling interest in confining the electorate to the current rendering property owners. *See* Stewart v. Parish School Board, E.D. La. 1970, 310 F. Supp. 1172, 1181. The Supreme Court has reserved judgment on whether such a goal is permissible, let alone of compelling importance.[9] Kramer v. Union Free School District, 1969, 395 U.S. 621, 89 S. Ct. 1886; Cipriano v. City of Houma, 1969, 395 U.S. 701, 89 S. Ct. 1897. And the fact that the *Kramer* Court put other interests in the election's outcome on a par with the taxpayers' obligation to pay indicates that financial stake alone cannot be considered a compelling interest. *See* Comment, The Supreme Court 1968 Term, 83 Harv. L. Rev. 7, 80 (1969). Since the compelling qualities of this state interest are much in doubt, we will pretermit the question and answer the easier inquiry of whether it is necessary to exclude non-renderers from the electorate in order to achieve the goal of confining bond election suffrage to those who will pay the debt created.

Close judicial scrutiny reveals that Texas' classificatory is too imprecise to withstand an equal protection attack. It presumes that only those who render property will pay for the bonds approved. In reality, at least some of the renderers will pass on to non-renderers their portion of the bonds' cost. The property tax paid by a business establishment, for example, is sure to be passed on to customers in the form of higher prices. By patronizing the business the purchaser pays for a small part of the bonds. Yet Texas would exclude him from the bond election. The same is true of the non-renderer who rents an apartment or house. His rent pays the landlord's property taxes, which in turn service the bonds.

Moreover, Texas assumes that because a citizen is a non-renderer on election day he will never render property and thus never help pay for the bonds approved. Such an outlook is myopic, for bonds can represent long term financial obligations. For example, Fort Worth's

proposed library bonds would not be completely retired for forty years. In a society where upward mobility is commonplace, it is untenable to assume that because on election day one has rendered no property, perhpas because he owns nothing worth rendering, he will pay no property taxes for the next forty years. Today's renter may purchase a home tomorrow, and with the house will come property taxes and his share of the city's bonded debt. By the same token it is by no means certain that one who is a rendering property owner on election day will maintain that status for the bonds' life.

Since Texas' classificatory scheme fails to enfranchise all of those who will pay the bonds' cost, we conclude that the renderer/non-renderer classifications are too imprecisely drawn to further the state's articulated interest and hence cannot be termed "necessary." Consequently, even if the interest in limiting the ballot to those who will pay for the bonds is compelling, it will not justify the laws challenged here. We note in passing that Texas could pursue this same interest just as easily by broadening the tax base instead of narrowing the franchise.

The other state interest advanced to justify disenfranchising Texas' non-renderers is maintaining a credible penalty that will encourage voluntary rendering, which in turn enriches the state and city treasuries. This argument contends that some coercive threat is necessary to force the citizens to reveal their easily

concealed personalty to the tax assessor. If we do not tie rendering to the right to vote, the citizens will hide their personalty and property tax collection will become a very expensive, if not impossible, proposition.

Again we apply the compelling state interest test, this time asking whether the Texas disenfranchisement scheme is necessary to the state's goal of taxing personalty and enriching the fisc. After examining the defendants' argument in support of the necessity for thus limiting the franchise, we find it has several fatal flaws.

Defendants' concern with the concealability of personalty assumes that a substantial amount of property tax revenue comes from personalty other than automobiles. Autos are scarcely concealable; after all, they must be registered with the state. The record, however, does not disclose the amount of non-automobile personal property tax revenue, and we think it unlikely that the amount is great.

A second problem is that the laws appear poorly designed to achieve their purpose of bringing in revenue. One can vote without rendering *all* his property. In fact, he must render only one item. Tex. Election Code Ann. art. 5.04 (a) (Supp. 1973). *See* Note, 49 Texas L. Rev. 1113, 1118 (1971). And in Montgomery Independent School District v. Martin, 464 S.W. 2d 638 (Tex. 1971) the Texas Supreme Court emphasized that one may

vote if he renders property of any value. No piece of property is too insignificant or worthless. If disenfranchisement can be avoided by rendering only a small portion of one's property, and a nearly valueless portion at that, how does the state further its interest in protecting the fisc?[10] *See* Turner v. Fouche, 1970, 396 U.S. 346, 90 S. Ct. 532.

Third, we cannot believe that without the disenfranchisement device Texas will be unable to collect property taxes. At least thirty-six states have found workable alternatives, for they permit all qualified voters to vote in general bond elections. City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 S. Ct. 1990; Stewart v. Parish School Board, E.D. La. 1970, 310 F. Supp. 1172, n. 1. The Supreme Court has said that those thirty-six states "do not appear to have been significantly less successful in protecting property values and in soundly financing their municipal improvements." City of Phoenix v. Kolodziejski, *supra* at 399 U.S. 214, 90 S. Ct. 1996. The differing practice in those states convinces us that Texas can find an alternative tax collection device, and that disenfranchisement is not necessary to the furtherance of Texas' interest in efficient property taxation.[11]

Since we have decided that the rendering requirement cannot be called necessary, we need not resolve the question whether property tax collection is a compelling state interest. We simply note in passing that

tax collection, while unquestionably important, probably lacks compelling importance in the context of voting rights because it is irrelevant to the electoral process. Certainly a state could not justify a poll tax on the ground that the treasury was low. *Cf.* Harper v. Virginia State Board of Elections, 1966, 383 U.S. 663, 86 S. Ct. 1079; United States v. Texas, W.D. Texas 1966, 252 F. Supp. 234, *aff'd mem.* 384 U.S. 155, 86 S. Ct. 1383.

To summarize, today we hold that Texas and Fort Worth unconstitutionally have impeded their citizens' right to vote by disenfranchising those who have failed to render property for taxation. The laws in question violate the Constitution's equal protection clause by restricting the electorate when less constitutionally burdensome avenues are available for pursuing the state's articulated interests. They further violate the citizens' right to equal protection of the laws by creating imprecisely drawn classifications which do not achieve the state's desired goals. Therefore we grant the declaratory and injunctive relief necessary to ensure that all the qualified voters in Texas will be able to vote in future bond elections regardless of whether they have rendered property for taxation. Our decree shall also require the defendants to consider Fort Worth's proposed library bonds as approved by the voters participating in the election of April 11, 1972.

With the exception of that election, we shall order prospective relief only. We recognize that many com-

munities have relied on the Texas law and have approved or disapproved bonds in elections that excluded the votes of citizens not rendering property for taxation. It would not be in the public interest to disrupt the orderly processes of government by upsetting past elections.

WOODWARD, District Judge, specially concurring:

I concur with the result reached in Judge Thornberry's Memorandum Opinion. My concurrence is based upon the teachings of *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). The requirement that a person render property for taxation is tantamount to a requirement that a person own property before he may vote in an election authorizing the issuance of tax bonds. The ownership of property, like race, creed or color, has no relationship to one's ability to participate intelligently in the electoral processes, and a State may only limit the eligibility requirements of voters to those factors which would affect a citizen's ability to intelligently cast his vote. The defendants here, however, have attempted to limit participation in the election in question to those citizens who own property. Further, the challenged laws place the same limitations on other elections. The defendants, therefore, have exceeded the powers rightfully belonging to a state or any political subdivision thereof and it is my opinion that the statutes and ordinances in question have been properly held unconstitutional.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

Michael L. Stone, et al.,	)(	
	)(	
vs.	)(	CA 4-1975
	)(	
The City of Fort Worth, et al.,	)(	

BREWSTER, District Judge, concurring in result.

I reluctantly concur only in the *judgment* now being entered herein because I am unable to see a substantial distinction between this case on the one hand and City of Phoenix v. Kolodziejski, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970), on the other. My oath of office binds me to follow the decisions of the Supreme Court of the United States, whether I agree with them or not.

My own views regarding the constitutionality of the restrictions on voting here involved are the same as those expressed in the dissenting opinions in Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886,

23 L. Ed. 2d 583 (1969), Dunn V. Blumstein, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 995 (1972), and City of Phoenix v. Kolodziejski, supra. As Chief Justice Burger says in the Dunn case, 405 U.S., at 363, 31 L. Ed. 2d, at 296, the compelling state interest test, as recently applied by the Supreme Court has created a "seemingly insurmountable standard" which "demands nothing less than perfection." My feelings about the restrictions on voting imposed by the provisions of the state constitution and statutes and the city ordinance here involved coincide with those of Mr. Justice Stewart in regard to similar Arizona statutory restrictions, as expressed in the following quotation from his dissenting opinion in City of Phoenix v., Kolodziejski, supra, 399 U.S., at 218, 26 L. Ed. 2d, at 533:

> 'This is not the invidious discrimination that the Equal Protection Clause condemns, but an entirely rational public policy. . . ."

I do not agree with the reasoning of the Memorandum Opinion, but will not engage in a useless, lengthy discussion of it. However, I do feel compelled to make a few brief observations about matters in it.

There is language in the memorandum opinion which might be construed by a person not familiar with the record as indicating that the question before us is whether a restriction on voting based solely on rendition of property is constitutional. The provisions of the state constitution here involved say that the only qual-

ified electors in bond elections are persons "who own *taxable* property" in the political subdivision where such election is held, "and who have duly rendered the same for taxation."[1] The statute and the ordinance in question are to the same effect. If only rendition of some property, whether taxable or not, were required, my views about the kind of judgment to be entered would be different.

The memorandum opinion says that most automobiles and personal property are not rendered for taxation. I regard this as totally irrelevant. If it were pertinent, a look at the sworn statement of those who render their property for taxation might show that a good deal of personal property is rendered.

Finally, as I construe it, the memorandum opinion is calculated to leave the inference that most of the people who would be affected by the exclusion are those who have personal property but do not render it for taxation because nobody else does, and those who, though ambitious to make their own way, own "nothing worth rendering" today, but, being members of "a society where upward mobility is commonplace" will become substantial taxpayers tomorrow. My humble feeling is that most of these excluded will more likely be the kind who are able to earn their way but would rather live off other peoples' work. It would be safe to say that the exclusion would get everyone of the kind of people we know, as a matter of general knowledge, are in line for

the food that is being handed out by Publisher Hearst as a ransom to try to secure the release of his kidnapped daughter, and who are griping about the quality of food they are getting. My feeling is that those irresponsible people should not be allowed to vote to slap a lien on the property of someone else.

I deeply regret that I have been unable to find a legitimate way to distinguish the cases above cited.

[1] Since plaintiffs seek to enjoin the enforcement of a state statute on the grounds of its unconstitutionality, the jurisdiction of this three-judge court was properly invoked pursuant to 28 U.S.C. §§ 2281 and 2284. The case was tried upon stipulated facts.

[2] Plaintiffs joined the state attorney general because Texas law requires that he certify the legal validity of cities' proposed bond issues. Tex. Rev. Civ. Stat. Ann. art. 709d (Supp. 1973). They ask that he be required to decide the bonds' validity without regard to the laws attacked here as unconstitutional.

[3] § 3. Municipal elections; qualifications of voters

Sec. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Tex. Const. art. VI, § 3.

§ 3a. Bond issues; loans of credit; expenditures; assumption of debts; qualifications of voters

Sec. 3a. When an election is held by any county, or any number of counties, or any political sub-division of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

Tex. Const. art. VI, § 3a.

Art. 5.03 Qualifications for voting for bond issues, lending credit, expending money, or assuming debt

When an election is held by any county, or any number of counties, or any political subdivision of the state, or any political subdivision of a county or any defined district now or hereafter to be described and defined within the state, and which may or may not include towns, villages, or municipal corporations, or any city, town, or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political subdivision, district, city, town, or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. Property shall be deemed to have been duly rendered for taxation, for the purpose of determining eligibility to vote in an election as provided in this code and in Article VI, Section 3a, of the Texas Constitution, only if the property was rendered to the county, city, district, or other political subdivision holding the election within the period of time fixed by law for such rendition, or was placed on the tax rolls by the tax assessor prior to the date on which the election was ordered, if the regular rendition period expired before that date.

Tex. Election Code Ann. art. 5.03 (Supp. 1973).

Article 5.04 of the election code provides in part:

Art. 5.04 Affidavit of voter in bond election, etc.

(a) Before any person is allowed to vote in an election for the purpose of issuing bonds or otherwise lending credit, or expending

money or assuming any debt, he shall sign and swear to an affidavit to the effect that he owns property, giving a description of one item, which has been duly rendered for taxation to the political subdivision holding the election at a time and in a manner which entitles him to vote in the election, as provided in Section 35 (Article 5.03) of this code. The voter's registration certificate number shall be shown on the affidavit, and it shall contain a statement that the affiant understands that the giving of false information in the affidavit is a felony punishable by a fine not to exceed $5,000 or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment.

Tex. Election Code Ann. art. 5.04 (a) (Supp. 1973).

Art. 5.07 To vote in city elections

All qualified electors of this State, as described in the two preceding Sections [Arts. 5.05, 5.06]who shall have resided for six (6) months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers, but in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who own taxable property in the city or town where such election is held and who have duly rendered the same for taxation; and all electors shall vote in the election precinct of their residence.

Tex. Election Code Ann. art. 5.07 (1967).

[4] The city charter provides, in pertinent part:

Section 19. Issuance and Sale of Bonds. — The City Council shall have authority to provide for the issuance and sale of bonds for permanent improvements and for any other legitimate municipal purpose as may be determined by the City Council; but no bonds shall be issued to fund any overdraft or indebtedness incurred for current expenses of the city government, or any subdivision thereof. The City Council shall also have the right to fund any maturing bonds by the issuance of new bonds in lieu thereof at the same or a lower rate of interest. No bonds shall be issued or refunded that bear a greater rate of interest than five per cent per annum, and the same shall never be sold for less than par and accrued interest, and all bonds shall express upon their face the purpose of purposes for which they are issued.

No bonds shall be issued unless authorized by ordinance, which ordinance shall provide an adequate fund from the taxes for the payment of the annual interest and sinking fund of not less than two per cent per annum for the ultimate redemption of such bond issue, and such ordinance shall become effective without the necessity of publication. *Provided, that no bonds shall be issued, nor bonded debt created, unless authority therefor shall first be submitted to the qualified voters who pay taxes on property situated within the corporate limits of the City of Fort Worth;* and, if a majority of the votes cast at such election are in favor of the issuance of such bonds, then such issue shall be made; but, should the majority of the votes cast at said election be against the proposition, then such bonds shall not be issued. . . . [Emphasis supplied.]

Charter of the City of Fort Worth, ch. 25, § 19.

[5] In Texas, "[a]ll property, real, personal, or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, ..." Tex. Rev. Civ. Stat. Ann. art. 7145 (1960). While all property is taxable unless exempt, the exemptions are numerous. *See, e.g.*, Tex. Rev. Civ. Stat. Ann. art. 7150 (1960). For the purposes of this lawsuit the most significant exemption is in § 11 of article 7150: "All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine." Tex. Rev. Civ. Stat. Ann. art. 7150 (11) (1960).

[6] City of Phoenix v. Kolodziejski, 1970, 399 U.S. 204, 90 S. Ct. 1990; Cipriano v. City of Houma, 1969, 395 U.S. 701, 89 S. Ct. 1897; Kramer v. Union Free School District, 1969, 395 U.S. 621, 89 S. Ct. 1886.

[7] The election results were as follows:

	Owners of Property Rendered for Taxation	Non Renderers	Total
Proposition One			
For	13,466	4,094	17,560
Against	9,834	850	10,684
Proposition Two			
For	10,849	3,758	14,607
Against	12,234	1,132	13,366

[8] *Cf.* Rosario v. Rockefeller, 1973, ___ U.S. ___, 93 S. Ct. 1245. *Rosario* contains language that some might interpret to support the contention that non-rendering citizens are disenfranchising themselves, with no help from the state. In *Rosario* the plaintiffs challenged a New York law requiring those who wish to vote in a particular party primary to enroll in that party at least 30 days prior to the last general election preceding the primary. Plaintiffs claimed that those who failed to enroll in time, and thus were refused the right to vote in the primary, were being deprived of their right to equal protection. The Court rejected that contention, saying that if plaintiffs were disenfranchised, they had disenfranchised themselves by failing to enroll.

We believe *Rosario* is inapposite. New York's enrollment requirement was a reasonable state effort to preserve the integrity of the electoral process, a goal the Court called "legitimate and valid." The Texas rendering requirement, by contrast, is primarily an attempt to aid the state's taxation efforts, and is not designed to protect or improve the electoral process. Party enrollment, like registration, is an integral part of elections, and the state is fully justified in setting deadlines and cutoff dates necessary to administrate the electoral process. And an unavoidable concomitant of registration and enrollment is voluntary action by the individual voter. One cannot argue that voluntary submission to taxation is necessary to the administration of elections.

[9] *But cf.* Salyer Land Co. v. Tulare Lake Basin Water Storage District, 1973, ___U.S. ___, 93 S. Ct. 1224. In that case the Court approved an election in which the right to vote for directors of a water district was limited to landowners and apportioned according to the extent of the voter's holdings. The case is distinguishable becaue the Court emphasized that a water district is a governmental unit with a special limited purpose and a limited scope of authority. Therefore, the "one person, one vote" principle did not apply. It is inescapable that that principle does apply to the City of Fort Worth, a unit of local government exercising general governmental power.

[10] The ease with which citizens may meet Texas' rendering requirements does not buttress the defendants' argument that plaintiffs have not suffered discrimination. The Supreme Court has

said:

> To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor. The degree of the discrimination is irrelevant.

Harper v. Virginia State Board of Electors, 1966, 383 U.S. 663,668, 86 S. Ct. 1079, 1082.

[11] *Cf.* Dunn v. Blumstein, 1972, 405 U.S. 330, 92 S. Ct. 995.

> Statutes affecting constitutional rights must be drawn with "precision," . . . and must be "tailored" to serve their legitimate objectives. . . . And if there are other, reasonable ways to achieve those goals with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose "less drastic means."
> [Citations omitted.]

405 U.S. at 343, 92 S. Ct. at 1003.

[1] The quotations are from Art. VI, Sec. 3a, of the Constitution of Texas.

APPENDIX B

Notice of Appeal

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF FORT WORTH DIVISION

Michael L. Stone, et al., *Plaintiffs*	)(	
	)(	Civil Action
v.	)(	
	)(	No. 4-1975
The City of Fort Worth, et al., *Defendants*	)(	

NOTICE OF APPEAL TO THE

SUPREME COURT OF THE UNITED STATES

Notice is hereby given that John L. Hill, Attorney General of the State of Texas, Defendant in the above named case, hereby appeals to the Supreme Court of the United States from the final order granting a permanent injunction entered in this action on the 25th day of March, 1974.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Respectfully submitted,

JOHN L. HILL
Attorney General of Texas

MIKE WILLATT
Assistant Attorney General

G. CHARLES KOBOISH
Assistant Attorney General

Box 12548, Capitol Station
Austin, Texas 78711

(Note: Filed with District Clerk on April 18, 1974.)

PROOF OF SERVICE

I, Mike Willatt, an attorney in the Office of the Attorney General of Texas, Appellant herein, depose and say that on the _____day of _____, 1974, I served copies of the foregoing Notice of Appeal to the Supreme Court of the United States on the several parties thereto, as follows:

(1) on Michael L. Stone, et al, Plaintiffs by mailing a copy in a duly addressed envelope with first class postage prepaid, addressed to Mr. Don Gladden and Mr. Marvin Collins, counsel of record for the Plaintiffs, located at 702 Burk Burnett Building, Fort Worth, Texas 76102.

(2) on R.M. Stovall, Mayor; S.G. Johndroe, Jr., City Attorney; Roy A. Bateman, City Secretary; Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W.S. Kemble, Jr., John O'Neill, Ted C. Peters, Pat Reece, Mrs. Margaret Rimmer, council members; and the City of Fort Worth, a municipal corporation, by mailing a copy in a duly addressed envelope, with first class postage prepaid, addressed to Mr. S.G. Johndroe, Jr., City Attorney, Attorney for Defendants, located at 1000 Throckmorton Street, Fort Worth, Texas 76102.

All parties requried to be served have been served.

MIKE WILLATT
Assistant Attorney General

Subscribed and sworn to before me, at _____ this ____ day of _____, 1974.

Notary Public

APPENDIX C

Full text of:

Tex. Const. Art. VI, Section 3 (1955)
Tex. Const. Art. VI, Section 3a (1955)
Tex. Election Code Ann. Art. 5.03 (Supp. 1973)
Tex. Election Code Ann. Art. 5.04 (a) (Supp. 1973)
Tex. Election Code Ann. Art. 5.07 (1967)
Charter of the City of Fort Worth, Ch. 25, § 19

Tex. Const. Art. VI, Section 3 (1955):

§ 3 Municipal elections; qualifications of voters

Sec. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Tex. Const. Art. VI, Section 3a (1955):

§ 3a. Bond issues; loans of credit; expenditures; assumption of debts; qualifications of voters

Sec. 3a. When an election is held by any county, or any number of counties, or any political subdivision of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political

subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence.

Tex. Election Code Ann. Art. 5.03 (Supp. 1973):

Art. 5.03 Qualifications for voting for bond issues, lending credit, expending money, or assuming debt

When an election is held by any county, or any number of counties, or any political subdivison of the state, or any political subdivision of a county or any defined district now or hereafter to be described and defined within the state, and which may or may not include towns, villages, or municipal corporations, or any city, town, or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the state, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. Property shall be deemed to have been duly rendered for taxation, for the purpose of determining eligibility to vote in an election as provided in this code and in Article VI, Section 3a, of the Texas Constitution, only if the property was rendered to the county, city, district, or other political subdivision holding the election within the

period of time fixed by law for such rendition, or was placed on the tax rolls by the tax assessor prior to the date on which the election was ordered, if the regular rendition period expired before that date.

Tex. Election Code Ann. Art. 5.04 (a) (Supp. 1973):

Art. 5.04 Affidavit of voter in bond election, etc.

(a) Before any person is allowed to vote in an election for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, he shall sign and swear to an affidavit to the effect that he owns property, giving a description of one item, which has been duly rendered for taxation to the political subdivision holding the election at a time and in a manner which entitles him to vote in the election, as provided in Section 35 (Article 5.03) of this code. The voter's registration certificate number shall be shown on the affidavit, and it shall contain a statement that the affiant understands that the giving of false information in the affidavit is a felony punishable by a fine not to exceed $5,000 or by imprisonment in the penitentiary not to exceed five years, or by both such fine and imprisonment.

Tex. Election Code Ann. Art. 5.07 (1967):

Art. 5.07 To vote in city elections

All qualified electors of this State, as described in the

two preceding Sections [Arts. 5.05, 5.06] who shall have resided for six (6) months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers, but in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who own taxable property in the city or town where such election is held and who have duly rendered the same for taxation; and all electors shall vote in the election precinct of their residence.

Charter of the City of Fort Worth, Ch. 25, § 19:

Section 19. Issuance and Sale of Bonds

—The City Council shall have authority to provide for the issuance and sale of bonds for permanent improvements and for any other legitimate municipal purpose as may be determined by the City Council; but no bonds shall be issued to fund any overdraft or indebtedness incurred for current expenses of the city government, or any subdivision thereof. The City Council shall also have the right to fund any maturing bonds by the issuance of new bonds in lieu thereof at the same or a lower rate of interest. No bonds shall be issued or refunded that bear a greater rate of interest than five per cent per annum, and the same shall never be sold for less than par and accrued interest, and all bonds shall

express upon their face the purpose of purposes for which they are issued.

No bonds shall be issued unless authorized by ordinance, which ordinance shall provide an adequate fund from the taxes for the payment of the annual interest and sinking fund of not less than two per cent per annum for the ultimate redemption of such bond issue, and such ordinance shall become effective without the necessity of publication. Provided, that no bonds shall be issued, nor bonded debt created, unless authority therefor shall first be submitted to the qualified voters who pay taxes on property situated within the corporate limits of the City of Fort Worth; and, if a majority of the votes cast at such election are in favor of the issuance of such bonds, then such issue shall be made; but, should the majority of the votes cast at said election be against the proposition, then such bonds shall not be issued. The City Council shall have full power and authority to prescribe the way and manner in which such election shall be held, the notice to be given therefor, the polling places in the various parts of the City at which the election is to be held, prescribe the form of ballot, and the other details of said election, independently of the general election laws of the State of Texas. But this requirement as to submitting the question of the issuance of bonds to a vote of the people before the same can be authorized shall not apply to the refunding of bonds heretofore issued, where the same

can be refunded at the same or a lower rate of interest, if in the judgment of the City Council the said bonds cannot be retired, either in whole or in part, at maturity. The said bonds when issued shall be submitted to and approved by the Attorney General of the State of Texas, as required by the statutes of this State, before being offered for sale in the market.

APPENDIX D

Factual Stipulations Taken From the Pre-Trial Order

FACTS ESTABLISHED BY STIPUATION

1. That the defendant City of Fort Worth is a municipal corporation located in Tarrant County, Texas, and duly organized and existing under the Constitution and laws of the State of Texas and by home-rule Charter duly adopted by its electorate in December of 1924 under the provisions of Article XI, Section 5, of the Constitution of the State of Texas.

2. That at the time of the filing of this suit, defendant Crawford Martin was the duly elected Attorney General of the State of Texas.

3. That defendant S.G. Johndroe, Jr., is the duly appointed City Attorney of the City of Fort Worth.

4. That at the time of the filing of this suit and at the present time R.M. Stovall is the duly elected Mayor of the City of Fort Worth.

5. That the defendant Roy A. Bateman is the duly appointed City Secretary-Treasurer of the City of Fort Worth.

6. That at the time of the filing of this suit and at the present time the defendants, Leonard E. Briscoe, Taylor Gandy, Jess M. Johnston, Jr., W.S. Kemble, Jr.,

John J. O'Neill, Ted C. Peters, Pat Reece and Mrs. Margret Rimmer, are the duly elected members of the City Council of the City of Fort Worth.

7. That Plaintiffs' Exhibit "A" is a true and correct copy of the Charter of the City of Fort Worth, as amended.

8. That Chapter VI of the Charter of the City of Fort Worth provides for certain duties and responsibilities of the defendant S.G. Johndroe, Jr., as City Attorney, and reads as follows:

"DEPARTMENT OF LAW"

"Section 1. In addition to the departments created and placed under the immediate control of the City Manager, there is hereby created another department, to be known as the Department of Law. The Director or head of this department shall be a competent practicing lawyer, of recognized ability, residing in the City, whose appointment shall be recommended by the Manager and approved by the Council. He shall serve for a period of two years from the date of his appointment, unless sooner discharged by the Council, either upon its own motion or upon the recommendation of the Manager, on account of his services not proving satisfactory; and of this matter the Council shall be the sole judge, and their decision with respect thereto shall be final.

"Section 2. The Director of the Department of Law shall be known as the City Attorney, and shall have power to appoint such assistants as may be

deemed necessary by him, subject to the approval of the Manager and the Council; such assistants to serve in that capacity as long as their services are satisfactory to the Council and the City Manager. The City Attorney and his assistants shall receive such compensation as may be fixed by resolution of the Council.

"Section 3. Duties of the City Attorney.—He shall be the legal adviser of and attorney and counsel for the City and for all officers and departments thereof, in all matters relating to their official duties. He shall prosecute or defend all suits for and on behalf of the City in all the courts, and shall prepare all contracts, bonds and other instruments in writing in which the City is concerned, and shall endorse on each his approval as to the form and legality thereof. No such bond, contract or instrument shall become effective without such endorsement by the City Attorney thereon.

"Section 4. He shall attend all sessions of the Council and make diligent investigation and report to the Council, or to the City Manager, or any director of departments, his opinion with respect to any legal matter submitted to him by any of them. He shall, either in person or by an assistant, act as Prosecuting Attorney in the Corporation Court. He shall prosecute all cases brought before such court and perform the same duties, as far as they are applicable thereto, as are required of the Prosecuting Attorney of the County. He shall maintain his office in the City Hall, in such place as may be provided by the Council, and shall freely confer with and advise the City Manager on all matters that may be referred to him by the City Manager. He shall prepare in correct legal form all ordinances passed by the Council.

"Section 5. The City Attorney shall apply in the

name of the City to a court of competent jurisdiction for an order of injunction to restrain any misapplication of the funds of the City, or the abuse of its corporate powers, or the execution or performance of any contract made in behalf of the City in contravention of law, or which was procured by fraud or corruption.

"Section 6. When an obligation or contract made on behalf of the City granting a right or easement, or creating a public duty, is being evaded or violated, the City Attorney shall likewise apply for the forfeiture or the specific performance thereof, or for such relief as the nature of the case may require.

"Section 7. In case any officer or commission shall fail to perform any duty required by law, the City Attorney shall apply to a court of competent jurisdiction for a writ of mandamus to compel the performance of such duty.

"Section 8. Taxpayers' Suits.—In case the City Attorney, upon written request of three taxpayers of the City, fails to make any application provided for in any of the preceding three sections, such taxpayers may institute suit or proceedings for such purpose, in their own names, on behalf of the City; but no such suit or proceeding shall be entertained by any court until such request shall have been first made to the City Attorney, nor until the said taxpayers shall have given security for the costs of the proceedings.

"Section 9. The City Attorney and his assistants shall be responsible for the proper and efficient handling of the entire legal affairs, suits, pleas and litigation in which the City is interested. No extra counsel shall be employed to assist the City Attorney, save and except in cases of extraordinary importance and emergency, and then only on the

written recommendation of the City Manager showing the necessity and importance of employing such additional legal assistance, approved and adopted by the Council. In such contingency, the Council shall fix in advance, as far as practicable, the compensation to be allowed such extra counsel by resolution spread upon the minutes."

9. That Plaintiffs' Exhibit "B" (also identified as Exhibit I in Plaintiffs' First Amended Complaint) is a true and correct copy of Ordinance No. 6644, which ordinance was the ordinance calling the bond election held on the 11th day of April, 1972.

10. That Section 19 of Chapter XXV of the Charter of the City of Fort Worth reads as follows:

"Section 19. Issuance and Sale of Bonds.—The City Council shall have authority to provide for the issuance and sale of bonds for permanent improvements and for any other legitimate municipal purpose as may be determined by the City Council; but no bonds shall be issued to fund any overdraft or indebtedness incurred for current expenses of the city government, or any subdivision thereof. The City Council shall also have the right to fund any maturing bonds by the issuance of new bonds in lieu thereof at the same or a lower rate of interest. No bonds shall be issued or refunded that bear a greater rate of interest than five per cent per annum, and the same shall never be sold for less than par and accrued interest, and all bonds shall express upon their face the purpose or purposes for which they are issued.

"No bonds shall be issued unless authorized by ordinance, which ordinance shall provide an ade-

quate fund from the taxes for the payment of the annual interest and sinking fund of not less than two per cent per annum for the ultimate redemption of such bond issue, and such ordinance shall become effective without the necessity of publication. Provided, that no bonds shall be issued, nor bonded debt created, unless authority therefor shall first be submitted to the qualified voters who pay taxes on property situated within the corporate limits of the City of Fort Worth; and, if a majority of the votes cast at such election are in favor of the issuance of such bonds, then such issue shall be made; but, should the majority of the votes cast at said election be against the proposition, then such bonds shall not be issued. The City Council shall have full power and authority to prescribe the way and manner in which such election shall be held, the notice to be given therefor, the polling places in the various parts of the City at which the election is to be held, prescribe the form of ballot and the other details of said election, independently of the general election laws of the State of Texas. But this requirement as to submitting the question of the issuance of bonds to a vote of the people before the same can be authorized shall not apply to the refunding of bonds heretofore issued, where the same can be refunded at the same or a lower rate of interest, if in the judgment of the City Council the said bonds cannot be retired, either in whole or in part, at maturity. The said bonds when issued shall be submitted to and approved by the Attorney General of the State of Texas, as required by the statutes of this State, before being offered for sale in the market."

11. That section 29 of Chapter XXVIII of the Charter of the City of Fort Worth reads in part as follows:

"Section 29. Elections — Council to Provide for

Holding Same — Counting Returns and Declaring Result.—The City Council shall make all necessary regulations concerning elections, the manner and method of holding same, by proper ordinances enacted for that purpose. Such regulations, however, shall be in keeping with the provisions of this Charter and shall be in keeping and consistent with the provisions of the State law applicable to elections in municipalities, insofar as the same may be practicable. ***"

That Section 30 of Chapter XXVIII of the Charter of the City of Fort Worth reads as follows:

"Section 30. Oath of Office.—Every officer of the City shall, before entering upon the duties of his office, take and subscribe to an oath or affirmation, to be filed and kept in the office of the City Secretary, that he will support, protect and defend the Constitution and laws of the United States and of the State of Texas, and in all respects faithfully discharge the duties of his office or position. This provision shall apply to the City Manager and to the heads of departments."

12. That Article 709 of the Revised Civil Statutes of the State of Texas provides in part that

"Before any bonds shall be offered for sale, ***the mayor ***shall forward the bonds to the Attorney General, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of the ***city ***, including the series of bonds proposed, together with the amount of the assessed value of the *** city *** for purposes of taxation as shown by the last official assessment of such *** city ***. Such *** mayor

shall also furnish the Attorney General with any additional information he may require."

13. That Article 709d of the Revised Civil Statutes of the State of Texas provides in part that

> "When *** the bonds of any incorporated city *** are offered for sale, the party offering, or proposing to sell, such bonds, obligations, and pledges shall first submit them to the Attorney General, who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds, obligations, and pledges were issued in conformity with law, and that they are valid and binding obligations, he shall thereupon certify to their validity, and his certificate to that effect, so procured by the party offering such bonds, obligations, and pledges as the case may be, shall be submitted to the Comptroller *** with the bonds, obligations, and pledges so offered for sale, and shall be carefully preserved by the Comptroller. ***"

14. That the Attorney General of Texas has duties which include the certification of the legality of proceedings underlying the issuance of any proposed municipal bonds and the issuance of an opinion as to such legality prior to their registration by the Comptroller of Public Accounts of the State of Texas.

15. That Article 4398 of the Revised Civil Statutes of the State of Texas provides as follows:

"ATTORNEY GENERAL
***

"Art. 4398. To examine bonds

He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify."

16. That prior to the holding of the election of April 11, 1972, the defendant City Secretary of the City of Fort Worth instructed each of the election judges for the bond election, and that such instruction basically required the separation of the votes of persons who owned taxable property which had been rendered for taxation from those of other qualified electors or voters who had not rendered property for taxation.

17. That the defendant City of Fort Worth and Roy A. Bateman made available two separate affidavits for voters at the polling places on April 11, 1972, one of such affidavits being for persons owning taxable property which had been duly rendered or assessed for taxation, and the other affidavit being for persons who did not wish to sign an affidavit showing ownership of taxable property which has been duly rendered or assessed for taxation. These affidavits are Plaintiffs' Exhibits

C-1 and C-2, and these exhibits are also identified as Exhibit K in Plaintiffs' First Amended Complaint.

18. That the returns of the municipal election of the City of Fort Worth held on April 11, 1972, were canvassed and approved by the City Council of said City in regular, open, public meeting on April 17, 1972, which canvass and approval reflect the following:

> "Councilman Gandy made a motion, seconded by Councilman Briscoe, that the tabulation of returns of the City of Fort Worth Bond Election held April 11, 1972, as prepared from the certified returns, submitted by the judges and clerks in each election precinct and presented by the City Secretary, be found correct, and that the votes cast on Proposition No. 1, as submitted were:

	Owners of Property Rendered for Taxation	Non Renderers	Total
For	13,466	4,094	17,560
Against	9,834	850	10,684

and that the votes cast on Proposition No. 2 were:

For	10,849	3,758	14,607
Against	12,234	1,132	13,366

> and that the tabulation of returns of said election be in all things approved and adopted. When the motion was put to a vote by the Mayor, it prevailed unanimously."

19. That prior to issuing and selling any general obligation bonds, it is a matter of necessity to publish an official notice of sale thereof; to describe and provide for terms and specifications in the sale thereof; to make provision for redemption, denomination, type of bid and interest rates, and basis of award; to provide for a good faith deposit; to provide for printing and the furnishing of the purchaser's written opinion; to provide no-litigation certificates; to provide for delivery; to regulate future sales; and to prepare and furnish an official bid form; and that after the taking of bids thereon, it is necessary to provide a complete transcript of the proceedings, to adopt an ordinance levying the tax to pay the interest and provide a sinking fund, to provide a statement of the total bonded indebtedness of the City, including the series of bonds proposed, together with the amount of the assessed value of the real, personal and mixed property in the City for purposes of taxation as shown by the last official assessment rolls, to submit the bonds to the Attorney General of Texas for inspection and certification pursuant to Article 709d of the Texas Revised Civil Statutes, and to furnish the Attorney General with any additional information that he may require.

20. That the defendant City Attorney, S.G. Johndroe, Jr., has advised the City Council of the opinion delivered March 10, 1971, in Montgomery Independent School District v. Crawford Martin, Attorney General of Texas, 464 S.W. 2d 638 (1971), wherein the Texas

Supreme Court upheld the validity of Article 6, Section 3a, of the Texas Constitution when challenged on the ground that it violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; and the Supreme Court of Texas also found that such provision did not violate, but strengthened, the Equal Protection Clause of the Fourteenth Amendment; and that the defendant City Attorney, S.G. Johndroe, Jr., as admitted in Paragraph 22 of the Original Answer of Defendants, R.M. Stovall et al., further advised the City Council of the City of Fort Worth of the procedural steps and necessary prerequisites prior to the issuance and sale of general obligation bonds as set out above in Stipulation No. 19.

21. That the defendants, City Council members of the City of Fort Worth, when acting as a body in their official capacity as City Council members and as the duly authorized governing body of the City of Fort Worth, have the "authority to provide for the issuance and sale of bonds for permanent improvements and for any other legitimate municipal purpose as may be determined by the City Council"; and that such authority is conferred in part upon the City Council by Chapter XXV, Section 19, of the Charter of the City of Fort Worth.

22. That defendant Roy A. Bateman, in his capacity as City Secretary of the City of Fort Worth, had the following duties with respect to the April 11, 1972, City

of Fort Worth bond election as set forth in Ordinance No. 6644 of the City of Fort Worth:

"SECTION 6.

"That the official ballots to be used shall be in compliance with the applicable provisions of Article 6.05 of the Election Code of the State of Texas, as amended, and shall have written or printed thereon the following:

PROPOSITION NO. 1.

"Place an 'X' in the square beside the statement indicating the way you wish to vote.

☐FOR ☐AGAINST

Shall the City of Fort Worth, Texas, through its City Council, issue its negotiable coupon bonds in the principal sum of Three Million Dollars ($3,000,000.00) for the legitimate municipal purpose of acquiring, equipping and improving the physical equipment and personal property of the Fort Worth Transit Company, a private corporation, and acquiring the necessary lands therefor, said bonds being payable serially as may be determined by the City Council, so that the last maturing bonds shall become payable within forty (40) years from the date thereof, bearing interest at a rate not to exceed the maximum prescribed by law at the time of the issuance thereof, payable semiannually, and levy a sufficient tax to pay the interest on said bonds and create a sinking fund sufficient to redeem said bonds at the maturity thereof?

PROPOSITION NO. 2.

"Place an 'X' in the square beside the statement

indicating the way you wish to vote.

☐ FOR ☐ AGAINST

Shall the City of Fort Worth, Texas, through its City Council, issue its negotiable coupon bonds in the principal sum of Six Million, Eight Hundred Sixty Thousand Dollars ($6,860,000.00) for the purpose of making permanent city improvements by constructing, building, improving and equipping buildings for the public library system and acquiring the necessary lands therefor, said bonds being payable serially as may be determined by the City Council, so that the last maturing bonds shall become payable within forty (40) years from the date thereof, bearing interest at a rate not to exceed the maximum prescribed by law at the time of the issuance thereof, payable semi-annually, and levy a sufficient tax to pay the interest on said bonds and create a sinking fund sufficient to redeem said bonds at the maturity thereof?

"SECTION 7.

"That the City Secretary is hereby ordered and directed to prepare and issue ballots for absentee voting and for the special election and to stamp same 'Official Ballot,' on which ballots shall be printed the propositions hereinabove set forth.

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"SECTION 10.

"That the City Secretary shall furnish election officials said ballots, together with any other forms, blanks or instructions in accordance with the Charter of the City of Fort Worth, Texas, and the laws of the State of Texas insofar as same are applicable, and the provisions of this ordinance un-

less a court of competent jurisdiction orders otherwise.

"SECTION 11.

"That the way and manner of holding this election, the notice to be given therefor, the polling places, the personnel of the officers, precinct judges and substitutes therefor who are to hold the same, and all details connected with the holding of the election shall be determined and arranged by the City Council and administered under the direction of and by the City Secretary.

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"SECTION 13.

"That the City Secretary is hereby authorized and directed to cause notice of said election to be given by posting a substantial copy of this election order in each of the election precincts of said City and also at the City Hall. That this notice of said election shall also be published on the same day in each of two (2) successive weeks in a newspaper of general circulation published within said City, the date of the first publication to be not less than fourteen (14) days prior to the date set for said election, and the City Secretary shall see that proper publication is made and proper notice of this election is given, in full conformity with the Charter of the City of Fort Worth, Texas, and the applicable statutes of the State of Texas."

23. That on the 13th day of March, 1972, the City Council of the City of Fort Worth adopted Ordinance No. 6644, which provided for the submission of two propositions to the electorate of the City of Fort Worth, the election to be held on April 11, 1972; and that such

propositions are set out in Stipulation No. 22 above (Section 6 of Ordinance No. 6644).

That Ordinance No. 6644 provided in Section 3 thereof for the holding of two separate but simultaneous elections, as follows:

"SECTION 3.

"That said election shall be held and conducted, in effect, as two separate but simultaneous elections, to wit: One election at which only the resident, qualified electors who own taxable property in the City and who have duly rendered the same for taxation shall be entitled to vote on said propositions, and another election at which all other resident, qualified electors of the City shall be entitled to vote on said propositions. The votes cast at each of said separate but simultaneous elections shall be recorded, returned and canvassed separately. It is hereby declared that the purpose of holding the election in such manner is to ascertain arithmetically:

(a) The aggregate votes cast at the election for and against said propositions by resident, qualified electors of the City; and also

(b) The aggregate votes cast at the election for and against said propositions by resident, qualified electors who own taxable property in the City and who have duly rendered the same for taxation.

Each elector shall be entitled to vote once on each of the propositions in accordance with the foregoing provisions of this ordinance.

"That the the above and foregoing dual election

procedure shall be followed unless a court of competent jurisdiction orders otherwise."

24. The Attorney General's policy in the approval of general obligation tax bonds since December 19, 1969, has been that each proposition must be approved by the property owning ad valorem taxpayers whose property has been duly rendered (as required by Article 6, §§ 3 and 3 (a) of the Texas Constitution) and each proposition must also receive the approval of the aggregate vote of property-owning ad valorem taxpayers whose property has been duly rendered and all other qualified electors (the test required by the Phoenix case).

This position was taken to insure that all general obligation tax bonds voted in Texas would be in full compliance with the Texas law and at the same time be protected in the event the Supreme Court of the United States subsequently holds the Texas voter qualification test for tax bond elections invalid. As a practical matter, until such time as the Texas law is tested in the Federal Courts, the municipal bonds of this State and its political subdivisions would be unmarketable without this protective procedure.

The Texas Supreme Court in Montgomery Independent School District v. Crawford Martin, Attorney General of Texas, 464 S.W. 2d 638 (1971), has spoken on the question of who shall vote in general obligation tax bond elections in Texas and it is incumbent upon the Attorney General of Texas to insure that the directives

of that Court are complied with in the approval of tax bonds. In those instances when tax bonds are not involved, the decisions of the United States Supreme Court in Kramer v. Union Free School District, 395 U.S. 621 (1969), and Cipriano v. City of Houma, 395 U.S. 701 (1969), are followed.

24A. If Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, were present in court, he would testify under oath that the requirement of rendition of property, personal and mixed, tangible and intangible, as a prerequisite to vote in a general obligation bond election is a matter of compelling necessity by reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and intangible property.

He would further testify, if he were present in court, that for the year 1970, the total personal property rendered for taxation in Texas amounted to $3,996,729,956.00 and for the year 1971 amounted to $4,261,631,147.00, which is an increase of 6.23%. This increase of $264,901,191.00 in personal property renditions for the year 1971 constitutes 11.59% of the overall increase in renditions of real, personal and mixed property over that rendered in 1970, which produces dollar-wise an additional $529,802.38 in revenues to the State. The total approximate revenues to the State as a result of ad valorem tax on personal property in the year 1971 amounted to approximately $8,523,262.30.

24B. If Robert S. Calvert, Comptroller of Public Accounts of the State of Texas, were present in court, he would testify under oath that the requirement of rendition and disclosure of property for purposes of ad valorem taxation is of the utmost importance, that there is a compelling necessity for an effective system of tax assessment and collection, and that such a system is mandatory for the orderly creation of, payment of and discharge of tax bond obligations.

25. That the declared intent of the City Council of the City of Fort Worth with respect to the sale and issuance of the general obligation tax-supported bonds as declared in the adoption of Ordinance No. 6644 was as follows:

"SECTION 8.

"That in the event the tax-supported bonds are authorized at the special election hereby ordered, the City Council of the City of Fort Worth, Texas, may issue for sale any part or portion of said amounts at such time and times as in the judgment of the City Council it determines that a lawful interest and sinking fund may be provided for to take care of and discharge any part or portion of the bonds so issued for sale, it being the purpose of this section to make clear that the City Council of the City of Fort Worth, Texas, may not be required to issue the full amount of the series of the bonds as herein submitted but may issue for sale any portion of the same at such time and times as it determines advisable, under the authority hereby conferred after said election."

26. That assuming the requirements in Articles 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have taken an oath "to support, protect and defend") did not exist, and assuming the policy of the Attorney General of Texas, as set forth in Stipulation No. 24 above, had never been announced and declared, then the City Council of the City of Fort Worth could exercise its independent legislative judgment and discretion and by ordinance would take such steps and procedures necessary to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644).

27. That assuming the requirements in artilce 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have taken an oath to "support, protect and defend") did not exist, and assuming the policy of the Attorney General of Texas as set forth in Stipulation No. 24 above had never been announced and declared, and assuming that the City Council of the City of Fort Worth determined it advisable, in the exercise of its independent legislative judgment and discretion, to take such steps and procedure necessary to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644), then and in such event the defendant Mayor of the City of Fort Worth,

acting in his official capacity, would, as soon as possible and as soon as is consistent with orderly procedure and due care, inasmuch as Proposition No. 2 in the April 11, 1972, bond election received a majority of votes cast by all non-rendering and rendering voters of the City of Fort Worth, Texas, and before any of such bonds were offered for sale, cause to be forwarded to the Attorney General the bonds and a transcript thereof, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund , and the statement of the total bonded indebtedness of the City, including the series of bonds proposed, together with the amount of the assessed value of the City for purposes of taxation as shown by the last official assessment of such City, and would also furnish the Attorney General with any additional information he might require.

28. That on April 17, 1972, the City Council of the City of Fort Worth, Texas, while in regular session, unanimously adopted the following motion:

> "Councilman Gandy made a motion, seconded by Councilman Briscoe, that the City Council go on record as stating that if the legal entanglements did not exist, the City would proceed to sell the library bonds voted April 11, 1972, to build a new central library, provided the other terms and conditions surrounding the sale of the bonds and construction bid procedures were reasonable and acceptable to the City Council, and when the motion was put to a vote by the Mayor, it prevailed unanimously."

29. That some time after the bond election held on April 11, 1972, defendant S.G. Johndroe, Jr., City Attorney of the City of Fort Worth, Texas, advised the City Council of said City "that the Attorney General has refused to certify bonds approved in identical circumstances, and it would be pointless to submit the Library Bonds (that is, the bonds submitted in Proposition No. 2) to the Attorney General," and he generally advised the City Council of the City of Fort Worth that it is just the same as if the issue had failed.

30. That assuming that the requirements in Articles 5.03, 5.04 and 5.07 of the Texas Election Code and in Article 6, Sections 3 and 3a, of the Texas Constitution (which statutory and constitutional provisions all defendants have taken an oath "to support, protect and defend") did not exist, and assuming that the policy of the Attorney General of Texas, as set forth in Stipulation No. 24 above, had never been announced and declared, and further assuming that the City Council of the City of Fort Worth had exercised its independent legislative judgment and discretion and had the City Attorney take such steps and procedure necessary for him to prepare for the issuance and sale of the Library Bonds submitted in Proposition No. 2 (Section 6 of Ordinance No. 6644), then and in that event the defendant City Attorney of the City of Fort Worth would prepare all instruments and documents necessary for the issuance and sale of the Library Bonds and endorse his approval thereon.

31. That on April 11, 1972, plaintiffs Michael L. Stone, Dorothy I. Ellis, Pat (Mrs. George A.) Crowley, James D. Henderson and Marjorie M. Watson were resident, qualified electors of the City of Fort Worth, the State of Texas, and the United States, and all of the plaintiffs remain such resident, qualified voters to this date.

32. That plaintiff Pat Crowley is one and the same person as "Mrs. George A. Crowley," who holds Tarrant County Voter Registration Certificate No. A-137229.

33. That all of the plaintiffs voted in the City of Fort Worth bond election held on April 11, 1972; that all of the plaintiffs cast ballots on both of the propositions submitted; and that all of the plaintiffs voted "for" (in favor of) the Library Bonds, Proposition No. 2.

34. That plaintiffs Michael L. Stone, Dorothy I. Ellis and James D. Henderson voted as qualified voters of the City of Fort Worth and not as rendering property owners, and that they voted "for" (in favor of) Proposition No. 2. (See Affidavit, Plaintiff's Exhibit E; also identified as Exhibit C in Plaintiffs' First Amended Complaint)

35. That plaintiffs Pat Crowley and Marjorie M. Watson voted in the City of Fort Worth bond election on April 11, 1972, as rendering property owners, and that they voted "for" (in favor of) Proposition No. 2. (See

Affidavit, Plaintiffs' Exhibit F; also identified as Exhibit D in Plaintiffs' First Amended Complaint)

36. That all of the above plaintiffs are fully competent to testify to the matters of fact contained in Stipulations Nos. 31 through 35, inclusive, and that each plaintiff has personal knowledge of that portion of such facts which pertain directly to him.

37. That if plaintiffs Michael L. Stone, Dorothy I. Ellis, Pat Crowley, James D. Henderson and Marjorie M. Watson were present in court, they would testify under oath to the matters of fact stipulated by the parties hereto in Stipulation Nos. 31 through 35, inclusive.

That the defendants stipulate that they have no evidence or testimony to present to this Court which would in any way contradict or impeach the truth of the matters of fact stated in Stipulations Nos. 31 through 35, inclusive.

38. That all of the bonds proposed to be issued under Proposition No. 2 (Library Bonds) would be general obligation, tax-supported bonds.

39. That the principal of and interest on general obligation, tax-supported bonds issued and sold by the City of Fort Worth to bona fide purchasers for value are paid solely from the revenues from taxes levied, assessed and collected by the City of Fort Worth from persons who own real, personal or mixed property which has been rendered for taxation.

40. That if defendant Roy A. Bateman were present in court, he would testify under oath that the requirement of rendition of property, personal and mixed, tangible and intangible property; and that the requirement necessity to local taxing authorities by reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and int intangible property; and that the requirement of voluntary rendition and disclosure of such property for purposes of ad valorem taxation is of the utmost importance and vitally necessary for an effective system of ad valorem tax assessment and collection and is directly and inextricably related to the creation of, payment and discharge of tax-supported bond obligations.

41. That if defendant Roy A. Bateman were present in court, he would testify under oath that the ad valorem tax is the life blood of local government financing and that the increasing burdens of local needs and inflation make ever increasing demands on local governments for additional tax revenues.

42. That if defendant Roy A. Bateman were present in court, he would testify under oath that the principal and interest on general obligation, tax-supported bonds

issued by the City of Fort Worth are, and will be, paid solely from the proceeds derived from taxes levied, assessed and collected from persons who own real, personal or mixed property which has been duly rendered for taxation; that the assessed valuation of real (including improvements), personal and mixed property in the City of Fort Worth for the fiscal year 1970-71 was $1,370,483,290; that of such assessed valuation, real property constituted $1,017,895.540, and personal and mixed property amounted to $352,587,750; that the assessed valuation of real (including improvements), personal and mixed property in the City of Fort Worth for the fiscal year 1971-72 was $1,444,024,440; and that of such assessed valuation, real property constituted $1,077,271,500 and personal and mixed property amounted to $366,752,240.

43. That if defendant Roy A. Bateman were present in court, he would testify under oath that for the year ending September 30, 1970, the City of Fort Worth derived $16,388,154 in taxes from real property rendered and placed on the assessment rolls and $5,676,669 from personal and mixed property rendered and placed on the assessment rolls; that for the year ending September 30, 1971, the City of Fort Worth derived $18,205,947.35 in taxes from real property rendered and placed on the assessment rolls and $6,198,138.73 from personal and mixed property rendered and placed on the assessment rolls; and that more than one-fourth of the total funds derived from

taxation in the City of Fort Worth for the years 1970-71 was derived from the taxation of personal and mixed property in said City.

44. That if defendant Roy A. Bateman were present in court, he would testify under oath that the fiscal year 1971-72 will require that from the funds derived from taxation, the sum of $7,364,524 must be allocated for principal and interest payments on general obligation tax bonds outstanding, which bonds are owned and held by bona fide purchasers for value throughout not only the entire United States but the world, and that the requirement of rendition of personal and mixed property, tangible and intangible, as a prerequisite to vote in a general obligation bond election is a matter of compelling necessity to the City of Fort Worth by reason of the plain and simple fact that no property is more susceptible of concealment than is personal and mixed, tangible and intangible property.

That as of December 31, 1971, the outstanding unpaid general obligation tax bond indebtedness of the City of Fort Worth was $92,852,000.

That the City Council of the City of Fort Worth must provide funds to meet its outstanding general obligation tax bond payments during the fiscal year 1971-72 in the amount of $7,364,524, and that in excess of $1,840,000 of such $7,364,524 must be obtained from taxes derived from the rendition of personal and mixed

property in the City of Fort Worth.

45. That the defendant Roy A. Bateman is fully competent to testify to the above matters of fact contained in Stipulations Nos. 40 through 44, inclusive, and as Treasurer of the City of Fort Worth, he has personal knowledge of such facts.

46. That plaintiffs stipulate that they have no evidence or testimony to present to this Court other than that contained in the foregoing stipulations which will in any way contradict or impeach the truth of the matters of fact stated in Stipulations Nos. 24, 24A, 24B, 40, 41, 42, 43, 44 and 45. That plaintiffs do not, however, stipulate that these reasons are sufficient to deny some resident, qualified voters of these taxing authorities the right to have their vote fully counted in bond elections, nor do they admit that these reasons satisfy the legal tests of Kramer v. Union Free School District, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969), to the effect that restrictions on the right of otherwise qualified voters to vote (other than those of age, residence, etc.) must be necessary to promote a compelling State interest. 395 U.S. 621 at 627, 89 S. Ct. 1886 at 1890, 23 L.Ed.2d 583 at 589.

Furthermore, the plaintiffs object to any testimony that there is a compelling necessity for exclusion of non-property owners in this type of election on the grounds that such testimony is a conclusion of law on

the part of the witness and that such testimony invades the province of the Court in deciding questions of law.

47. On April 11, 1972, the City of Fort Worth in fact held a bond election submitting two propositions to the voters: Proposition Number I provided for approval or non-approval by the voters of bonds for a transportation system; Proposition Number II provided for approval or non-approval of bonds by the voters for library facilities. On April 11, 1972, the following votes were cast and recorded on Proposition Numbers I and II in such Fort Worth city bond election:

Owners of Property Rendered for Taxation		Non Renderers	Total
Proposition I			
For	13,466	4,094	17,560
Against	9,834	850	10,684
Proposition II			
For	10,849	3,758	14,607
Against	12,234	1,132	13,366

48. The defendant City of Fort Worth, with the appropriate approval by the defendant City Council members of the City of Fort Worth, the defendant Mayor R.M. Stovall, and the defendant City Attorney

S.G. Johndroe, Jr., has sold the Transportation System bonds approved by the voters of the City of Fort Worth in Proposition Number I in the April 11, 1972 bond election.